SYNTHESISED TEXT
OF THE MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING AND THE AGREEMENT BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

General disclaimer on the synthesised text document

This document presents the synthesised text for the application of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 11 November 2012 (the "Agreement"), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the People's Republic of China and Canada on 7 June 2017 (the "MLI").

This document was prepared on the basis of the reservations and notifications submitted to the Depositary by the People's Republic of China on behalf of the Hong Kong Special Administrative Region of the People's Republic of China (the "HKSAR") on 25 May 2022 and 21 February 2023 and by Canada on 29 August 2019. These reservations and notifications are subject to modifications as provided in the MLI. Modifications made to reservations and notifications could modify the effects of the MLI on the Agreement.

The sole purpose of this document is to facilitate the understanding of the application of the MLI to the Agreement and the document does not constitute a source of law. The authentic legal texts of the Agreement and the MLI remain the only legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Agreement are included in boxes throughout the text of this document in the context of the relevant provisions of the Agreement. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the 2017 Organisation for Economic Co-operation and Development (OECD) Model Tax Convention on Income and on Capital.

In this document, changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Agreement (such as

changes from "Covered Tax Agreement" to "Agreement" and changes from "Contracting Jurisdictions" to "Contracting Parties"), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Agreement. Descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Agreement or to the Agreement must be understood as referring to the Agreement as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

References

The legal texts of the MLI and the Agreement are available via the following links:

The MLI:

https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf

In the HKSAR:

https://www.ird.gov.hk/eng/tax/dta_inc.htm

The reservations and notifications submitted to the Depositary by the People's Republic of China on behalf of the HKSAR on 25 May 2022 and 21 February 2023 and by Canada on 29 August 2019 are available via the MLI Depositary (OECD) webpage at the following link:

https://www.oecd.org/tax/treaties/beps-mli-signatories-and-parties.pdf

Disclaimer on the entry into effect of the provisions of the MLI

The provisions of the MLI applicable to the Agreement do not take effect on the same dates as the original provisions of the Agreement. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by the People's Republic of China on behalf of the HKSAR and Canada in their reservations and notifications submitted to the Depositary.

Entry into force of the MLI:

- 1 September 2022 for the People's Republic of China (including the HKSAR)
- 1 December 2019 for Canada

Date of receipt by the Depositary of the notification made by the People's Republic of China on behalf of the HKSAR confirming the completion of the HKSAR's internal procedures for the entry into effect of the provisions of the MLI with respect to the Agreement:

- 21 February 2023

The provisions of the MLI shall have effect with respect to the Agreement:

(a) in the HKSAR:

(i) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 April 2023; and

(ii) with respect to all other taxes levied by the HKSAR, for taxes levied with respect to years of assessment beginning on or after 1 April 2024; and

(b) in Canada:

(i) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2024; and

(ii) with respect to all other taxes levied by Canada, for taxes levied with respect to taxable periods beginning on or after 23 September 2023.

AGREEMENT BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF CANADA 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 Canada;

Recalling Article 151 of the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*;

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

The following paragraph 1 of Article 6 of the MLI is included in the preamble of this Agreement:

ARTICLE 6 OF THE MLI – PURPOSE OF A COVERED TAX AGREEMENT

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:

I. SCOPE OF THE AGREEMENT

Article 1

Persons Covered

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

Article 2

Taxes Covered

1. The existing taxes to which this Agreement shall apply are:

   (a) in the case of the Hong Kong Special Administrative Region, the taxes imposed by the Government of the Hong Kong Special Administrative Region under the *Inland Revenue Ordinance* ("Hong Kong Special Administrative Region tax");

   (b) in the case of Canada, the taxes imposed by the Government of Canada under the *Income Tax Act* ("Canadian tax").

2. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Parties shall notify each other of any significant changes that have been made in their taxation laws.

II. DEFINITIONS

Article 3

General Definitions

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

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

(b) the term "Canada", used in a geographical sense, means:

(i) the land territory, internal waters and territorial sea, including the air space above these areas, of Canada,

(ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the *United Nations Convention on the Law of the Sea*, done at Montego Bay on 10 December 1982 ("UNCLOS"), and

(iii) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of UNCLOS;

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

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

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

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

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

(h) the term "competent authority" means:

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

(ii) in the case of Canada, the Minister of National Revenue or the Minister's authorized representative;

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

(i) any individual possessing the nationality of Canada, and

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

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

2. As regards the application of this Agreement at any time by a 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 this 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 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 Canada, any person who, under the laws of Canada, is liable to tax therein by reason of the person's domicile, residence, place of management, place of incorporation or any other criterion of a similar nature. This term also includes the Government of Canada and any political subdivision or local authority of Canada, as well as any agency or instrumentality of the Government of Canada, or of a political subdivision or local authority of Canada. This term, however, does not include any person who is liable to tax in Canada in respect only of income from sources in Canada.

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

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

(b) if the Party in which the individual's centre of vital interests is situated cannot be determined, or if there is not a permanent home available to the individual in either Party, the individual shall be deemed to be a resident only of the Party in which the individual has an habitual abode;

(c) if the individual has an habitual abode in both Parties or in neither of them, the individual shall be deemed to be a resident only of the Party in which the individual has the right of abode (in

the case of the Hong Kong Special Administrative Region) or of which the individual is a national (in the case of Canada);

(d) if the individual has the right of abode in the Hong Kong Special Administrative Region and is also a national of Canada, or if the individual does not have the right of abode in the Hong Kong Special Administrative Region and is not a national of Canada, the competent authorities of the 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 Parties, the competent authorities of the Parties shall by mutual agreement endeavour to settle the question and to determine the mode of application of this Agreement to that person. In the absence of mutual agreement, that person shall not be entitled to claim any relief or exemption from tax provided by this Agreement.

Article 5

Permanent Establishment

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

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop; and

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

3. The term “permanent establishment” also includes a building site, a construction, assembly or installation project, or supervisory activities in connection with a building site, or with such a project, but only if that site, project or activities last more than six months.

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

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

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

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

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

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

   (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in 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 on behalf of an enterprise and has, and habitually exercises, in a Party an authority to conclude contracts on behalf 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 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 Party controls or is controlled by a company which is a resident of the other 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.

III. TAXATION OF INCOME

Article 6

Income from Immovable Property

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

2. The term "immovable property" shall have the meaning which it has for the purposes of the relevant tax law of the 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 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, and to income from the alienation of such property.

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

Article 7

Business Profits

1. The profits of an enterprise of a Party shall be taxable only in that Party unless the enterprise carries on business in the other 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 Party carries on business in the other Party through a permanent establishment situated therein, there shall in each 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 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 Party from determining the profits to be taxed by such 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 derived by an enterprise of a 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 and Article 7 (Business Profits), profits derived by an enterprise of a Party from the carriage by a ship or aircraft of passengers or goods taken on board at a place in the other Party for discharge at another place in that other Party may be taxed in that other Party, unless all or substantially all of the passengers or goods were taken on board at a place outside that other Party.

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

Article 9

Associated Enterprises

1. Where:

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

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

3. A Party shall not make a primary adjustment to the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its domestic laws and, in any case, after seven years from the end of the taxable year in which the profits which would be subject to such change would, but for the conditions referred to in paragraph 1, have been attributed to that enterprise.

4. The provisions of paragraphs 2 and 3 shall not apply in the case of fraud or wilful default.

Article 10

Dividends

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

2. However, such dividends may also be taxed in the 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 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) that controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends; and

(b) 15 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, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income 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 Party, carries on business in the other 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 (Business Profits) shall apply.

5. Where a company which is a resident of a Party derives profits or income from the other 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.

6. Nothing in this Agreement shall be construed as preventing a Party from imposing on the earnings of a company attributable to a permanent

establishment in that Party, or the earnings attributable to the alienation of immovable property situated in that Party by a company carrying on a trade in immovable property, a tax in addition to the tax that would be chargeable on the earnings of a company that is a resident of a Party. Any additional tax so imposed shall not exceed five per cent of the amount of those earnings that have not been subjected to such additional tax in previous taxation years. For the purpose of this provision, the term "earnings" means the earnings attributable to the alienation of such immovable property situated in a Party as may be taxed by that Party under the provisions of Article 6 (Income from Immovable Property) or of paragraph 1 of Article 13 (Capital Gains), and the profits, including any gains, attributable to a permanent establishment in a Party in a year and previous years, after deducting therefrom all taxes, other than the additional tax referred to herein, imposed on those profits in that Party.

7. **[REPLACED by paragraph 1 of Article 7 of the MLI[1]]** [A resident of a Party shall not be entitled to any benefits provided under this Article in respect of a dividend if one of the main purposes of any person concerned with an assignment or transfer of the dividend, or with the creation, assignment, acquisition or transfer of the shares or other rights in respect of which the dividend is paid, or with the establishment, acquisition or maintenance of the person that is the beneficial owner of the dividend, is for that resident to obtain the benefits of this Article.]

Article 11

Interest

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

2. However, such interest may also be taxed in the 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 Party, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

[1] Refer to the box following Article 25 of the Agreement.

3. Notwithstanding the provisions of paragraph 2:

(a) interest arising in a Party and paid to the Government of the other Party, or to a political subdivision or a local authority of that other Party, shall be exempt from tax in the first-mentioned Party;

(b) interest arising in the Hong Kong Special Administrative Region and paid to a resident of Canada shall be taxable only in Canada if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by Export Development Canada;

(c) interest arising in Canada and paid to the Hong Kong Monetary Authority shall be taxable only in the Hong Kong Special Administrative Region;

(d) interest arising in a Party and paid to any wholly-owned agency or instrumentality of the other Party, political subdivision or local authority, shall be taxable only in that other Party. However, this provision shall only apply in circumstances as may be agreed from time to time between the competent authorities of the Parties; and

(e) interest arising in a Party and paid to a resident of the other Party shall not be taxable in the first-mentioned Party if the beneficial owner of the interest is a resident of the other Party and is dealing at arm's length with the payer.

4. Subparagraph 3(e) shall not apply where all or any portion of the interest is paid or payable on an obligation that is contingent or dependent on the use of or production from property or is computed by reference to revenue, profit, cash flow, commodity price or any other similar criterion or by reference to dividends paid or payable to shareholders of any class of shares of the capital stock of a corporation.

5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures as well as income which is subjected to the same taxation treatment as income from money lent by the laws of

the Party in which the income arises. However, the term "interest" does not include income dealt with in Article 8 (Shipping and Air Transport) or Article 10 (Dividends).

6. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Party, carries on business in the other 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 (Business Profits) shall apply.

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

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

9. **[REPLACED by paragraph 1 of Article 7 of the MLI[2]]** [A resident of a Party shall not be entitled to any benefits provided under this Article in respect of interest if one of the main purposes of any person concerned with an assignment or transfer of the interest, or with the creation, assignment, acquisition or transfer of the debt-claim or other rights in respect of which the interest is paid, or with the establishment, acquisition or maintenance of the person that is the beneficial owner of the interest, is for that resident to obtain the benefits of this Article.]

[2] Refer to the box following Article 25 of the Agreement.

Article 12

Royalties

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

2. However, such royalties may also be taxed in the 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 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:

   (a) the use of, or the right to use, any copyright, patent, trade mark, design or model, plan, secret formula or process or other intangible property;

   (b) the use of, or the right to use, industrial, commercial or scientific equipment;

   (c) information concerning industrial, commercial or scientific experience; or

   (d) the use of, or the right to use:

      (i) motion picture films,

      (ii) films, videotapes or other means of reproduction for use in connection with television, or

      (iii) tapes for use in connection with radio broadcasting.

   However, the term "royalties" does not include income dealt with in Article 8 (Shipping and Air Transport).

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Party, carries on business in the other 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 (Business Profits) shall apply.

5. Royalties shall be deemed to arise in a Party when the payer is a resident of that Party. Where, however, the person paying the royalties, whether the payer is a resident of a Party or not, has in a Party a permanent establishment in connection with which the obligation to pay the royalties was incurred, and those royalties are borne by that permanent establishment, then those royalties shall be deemed to arise in the Party in which the permanent establishment is situated.

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

7. **[REPLACED by paragraph 1 of Article 7 of the MLI[3]]** [A resident of a Party shall not be entitled to any benefits provided under this Article in respect of a royalty if one of the main purposes of any person concerned with an assignment or transfer of the royalty, or with the creation, assignment, acquisition or transfer of rights in respect of which the royalty is paid, or with the establishment, acquisition or maintenance of the person that is the beneficial owner of the royalty, is for that resident to obtain the benefits of this Article.]

Article 13

Capital Gains

1. Gains derived by a resident of a Party from the alienation of immovable property referred to in Article 6 (Income from Immovable Property) and situated in the other Party may be taxed in that other Party.

[3] Refer to the box following Article 25 of the Agreement.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Party has in the other Party, including 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 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 Party from the alienation of:

   (a) shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Party; or

   (b) an interest in a partnership, trust or other entity, deriving more than 50 per cent of its value directly or indirectly from immovable property situated in the other Party;

   may be taxed in that other Party.

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

6. Where an individual who ceases to be a resident of a Party, and immediately thereafter becomes a resident of the other Party, is treated for the purposes of taxation in the first-mentioned Party as having alienated a property (in this paragraph referred to as the "deemed alienation") and is taxed in that Party by reason thereof, the individual may elect to be treated for purposes of taxation in the other Party as if the individual had, immediately before becoming a resident of that other Party, sold and repurchased the property for an amount equal to the lesser of its fair market value at the time of the deemed alienation and the amount the individual elects, at the time of the actual alienation of the property, to be the proceeds of disposition in the first-mentioned Party in respect of the deemed alienation. However, this provision shall not apply to property any gain from which, arising immediately before

the individual became a resident of that other Party, may be taxed in that other Party or to immovable property situated in a third Party.

Article 14

Income from Employment

1. Subject to the provisions of Articles 15 (Directors' Fees), 17 (Pensions) and 18 (Government Services), salaries, wages and other remuneration derived by a resident of a Party in respect of an employment shall be taxable only in that Party unless the employment is exercised in the other 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 Party in respect of an employment exercised in the other Party shall be taxable only in the first-mentioned Party if:

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

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

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

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

Article 15

Directors' Fees

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

Article 16

Entertainers and Sportspersons

1. Notwithstanding the provisions of Articles 7 (Business Profits) and 14 (Income from Employment), income derived by a resident of a Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that resident's personal activities as such exercised in the other Party, may be taxed in that other Party.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that individual's capacity as such accrues not to the entertainer or sportsperson personally but to another person, that income may, notwithstanding the provisions of Articles 7 (Business Profits) and 14 (Income from Employment), be taxed in the 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 derived from activities performed in a Party by a resident of the other Party in the context of a visit in the first-mentioned Party of a non-profit organization of the other Party, if the visit is wholly or mainly supported by public funds.

Article 17

Pensions

Pensions (including lump sums) arising in a Party and paid to a resident of the other Party in consideration of past employment may be taxed in the Party in which they arise and according to the laws of that Party.

Article 18

Government Service

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

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other 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 Canada, is a national thereof, or

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

2. The provisions of Articles 14 (Income from Employment), 15 (Director's Fees) and 16 (Entertainers and Sportspersons) shall apply to salaries, wages and other similar remuneration in respect of services rendered in connection with a business carried on by the Government of a Party or of a political subdivision or of a local authority.

Article 19

Students

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

Article 20

Other Income

1. Subject to the provisions of paragraph 2, items of income of a resident of a Party, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Party.

2. However, if such income is derived by a resident of a Party from sources in the other Party, such income may also be taxed in the Party in which it arises and according to the law of that Party.

3. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6 (Income from Immovable Property), if the recipient of such income, being a resident of a Party, carries on business in the other 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 (Business Profits) shall apply.

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

IV. ELIMINATION OF DOUBLE TAXATION

Article 21

Methods for Elimination of Double Taxation

1. Double taxation shall be avoided as follows:

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

   subject to the provisions of the laws of the Hong Kong Special Administrative Region relating to the allowance of a credit against Hong Kong Special Administrative Region tax of tax paid in a jurisdiction outside the Hong Kong Special Administrative Region (which shall not affect the general

principle of this Article), Canadian tax paid under the laws of Canada 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 Canada, shall be allowed as a credit against Hong Kong Special Administrative Region tax payable in respect of that income, provided that the credit so allowed does not exceed the amount of Hong Kong Special Administrative Region tax computed in respect of that income in accordance with the tax laws of the Hong Kong Special Administrative Region.

(b) In the case of Canada,

(i) subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions (which shall not affect the general principle of those provisions) and unless a greater deduction or relief is provided under the laws of Canada, tax payable in the Hong Kong Special Administrative Region on profits, income or gains arising in the Hong Kong Special Administrative Region shall be deducted from any Canadian tax payable in respect of such profits, income or gains, and

(ii) where, in accordance with any provision of this Agreement, income derived by a resident of Canada is exempt from tax in Canada, Canada may nevertheless, in calculating the amount of tax on other income, take into account the exempted income.

2. For the purposes of this Article, profits, income or gains of a resident of a Party which may be taxed in the other Party in accordance with this Agreement shall be deemed to arise from sources in that other Party.

V. SPECIAL PROVISIONS

Article 22

Non-Discrimination

1. Persons who, in the case of the Hong Kong Special Administrative Region, have the right of abode or are incorporated or otherwise constituted therein, and, in the case of Canada, are nationals of Canada, shall not be subjected in the other Party to any taxation or any requirement connected therewith that is 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 Canada) in the same circumstances, in particular with respect to residence, are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Party has in the other 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.

3. Nothing in this Article shall be construed as obliging a Party to grant to residents of the other 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 (Associated Enterprises), paragraph 8 of Article 11 (Interest), or paragraph 6 of Article 12 (Royalties), apply, interest, royalties and other disbursements paid by an enterprise of a Party to a resident of the other 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 Party, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Party, shall not be subjected in the first-mentioned Party to any taxation or any requirement connected therewith which is more burdensome than the taxation and connected requirements to which other similar

enterprises which are residents of the first-mentioned Party, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third Party, are or may be subjected.

6. This Article shall apply to taxes referred to in Article 2 (Taxes Covered).

Article 23

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Parties result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those Parties, address to the competent authority of the Party of which that person is a resident an application in writing stating the grounds for claiming the revision of such taxation. To be admissible, the application must be submitted within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority referred to in paragraph 1 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 Party, with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Parties.

3. For the purposes of Articles 6 (Income form Immovable Property) and 7 (Business Profits), a Party shall not, after the expiry of the time limits provided in its domestic laws and, in any case, after seven years from the end of the taxable period to which the income concerned was attributed, make a primary adjustment to the income of a resident of one of the Parties where that income has been charged to tax in the other Party in the hands of that resident. The foregoing shall not apply in the case of fraud or wilful default.

4. The competent authorities of the Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.

5. The competent authorities of the Parties may consult together for the elimination of double taxation in cases not provided for in this Agreement and may communicate with each other directly for the purpose of applying this Agreement.

6. If any difficulty or doubt arising as to the interpretation or application of this Agreement cannot be resolved by the competent authorities pursuant to the preceding paragraphs of this Article, the case may be submitted for arbitration if both competent authorities and the taxpayer agree and the taxpayer agrees in writing to be bound by the decision of the arbitration board. The decision of the arbitration board in a particular case shall be binding on both Parties with respect to that case. The procedure shall be established in an exchange of notes between the Parties.

Article 24

Exchange of Information

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

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

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

   (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other 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 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 Party in accordance with this Article, the other 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 Party to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a 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 the information relates to ownership interests in a person.

Article 25

Members of Government Missions

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

The following paragraph 1 of Article 7 of the MLI replaces paragraph 7 of Article 10, paragraph 9 of Article 11 and paragraph 7 of Article 12 of this Agreement:

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE
(*Principal purposes test provision)*

Notwithstanding any 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 26

Miscellaneous Rules

1. The provisions of this Agreement shall not be construed to restrict in any manner any exemption, allowance, credit or other deduction accorded by the laws of a Party in the determination of the tax imposed by that Party.

2. Nothing in this Agreement shall prevent a Party from:

   (a) imposing a tax on amounts included in the income of a resident of that Party with respect to a partnership, trust, company, or other entity in which a resident of that Party has an interest; or

   (b) applying the provisions of its law which are designed to prevent tax avoidance, including measures relating to thin capitalization.

3. The provisions of Articles 6 (Income from Immovable Property) to 20 (Other Income) of this Agreement shall not apply to any company, trust or other entity that is a resident of a Party and that is beneficially owned or controlled, directly or indirectly, by one or more persons who are not residents of that Party, if the amount of the tax imposed on the income or

capital of the company, trust or other entity by that Party is substantially lower than the amount that would be imposed by that Party (after taking into account any reduction or offset of the amount of tax in any manner, including a refund, reimbursement, contribution, credit, or allowance to the company, trust or partnership, or to any other person) if all of the shares of the capital stock of the company or all of the interests in the trust or other entity, as the case may be, were beneficially owned by one or more individuals who were residents of that Party.

4. Where under any provision of this Agreement any income is relieved from tax in a Party and, under the law in force in the other Party a person, in respect of that income, is subject to tax by reference to the amount thereof that is remitted to or received in that other Party and not by reference to the full amount thereof, then the relief to be allowed under this Agreement in the first-mentioned Party shall apply only to so much of the income as is taxed in the other Party.

5. For the purposes of paragraph 3 of Article XXII (Consultation) of the *General Agreement on Trade in Services*, which is part of the *Marrakesh Agreement Establishing the World Trade Organization*, done at Marrakesh on 15 April 1994, the Parties agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Agreement may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Parties. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 4 of Article 23 (Mutual Agreement Procedure) or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Parties.

VI. FINAL PROVISIONS

Article 27

Entry into Force

1. Each of the 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. This Agreement 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 the first day of April in the calendar year next following that in which this Agreement enters into force;

(b) in Canada:

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents, on or after the first day of January in the calendar year next following that in which this Agreement enters into force, and

(ii) in respect of other Canadian tax, for taxation years beginning on or after the first day of January in the calendar year next following that in which this Agreement enters into force.

3. Notwithstanding paragraph 2 of this Article, Article 8 (Shipping and Air Transport), and paragraph 3 of Article 13 (Capital Gains) shall have effect from the date of entry into force of this Agreement.

Article 28

Termination

1. This Agreement shall remain in force until terminated by a Party. Either Party may terminate this Agreement by giving the other Party written notice of termination at least six months before the end of any calendar year. A notice of termination given less than six months before the end of a calendar year shall be deemed to have been given in the first six months of the next calendar year. In such event, this Agreement shall cease to have effect:

(a) in the Hong Kong Special Administrative Region, in respect of Hong Kong Special Administrative Region tax, for any year of

assessment beginning on or after the first day of April in the calendar year next following that in which the notice is given;

(b) in Canada:

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents, after the end of that calendar year, and

(ii) in respect of other Canadian tax, for taxation years beginning after the end of that calendar year.

2. This Agreement shall terminate on the last date on which it has effect in accordance with paragraph 1, unless the Parties agree otherwise.

IN WITNESS WHEREOF the undersigned, duly authorized to that effect, have signed this Agreement.

DONE in duplicate at Hong Kong, this 11 day of November, 2012, in the Chinese, French and English languages, each version being equally authentic.

[SIGNED]

Protocol

At the time of signing the *Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Canada 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:

General

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

With reference to Article 2 (Taxes Covered)

2. It is understood that the terms "Hong Kong Special Administrative Region tax" and "Canadian tax" do not include any penalty or interest (including, in the case of the Hong Kong Special Administrative Region, any sum added to the Hong Kong Special Administrative Region tax by reason of default and recovered therewith and "additional tax" under Section 82A of the Inland Revenue Ordinance) imposed under the laws of either Party relating to the taxes to which the Agreement applies by virtue of Article 2 (Taxes Covered).

With reference to Article 10 (Dividends)

3. It is understood that the term "earnings" in paragraph 6 of Article 10 (Dividends) does not include business profits attributable to a permanent establishment in a Party or income from the trading of immoveable property in a Party that have been re-invested in that Party as determined in accordance with the law of that Party.

With reference to Article 24 (Exchange of Information)

4. For the purposes of Article 24 (Exchange of Information), it is understood that:

(a) the Article does not require the Parties to exchange information on an automatic or a spontaneous basis;

(b) information exchanged shall not be disclosed to any third jurisdiction for any purpose; and

(c) a Party may only request information relating to taxable periods for which the Agreement has effect for that Party.

IN WITNESS WHEREOF the undersigned, duly authorized to that effect, have signed this Protocol.

DONE in duplicate at Hong Kong, this 11 day of November, 2012, in the Chinese, French and English languages, each version being equally authentic.

[SIGNED]