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 THE FRENCH REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL AND THE PREVENTION OF FISCAL EVASION

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 the French Republic for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital and the Prevention of Fiscal Evasion signed on 21 October 2010 (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 the French Republic 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 the French Republic on 26 September 2018. 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 the French Republic on 26 September 2018 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 the French Republic 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 January 2019 for the French Republic

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 the French Republic:

(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 the French Republic, 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 THE FRENCH REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL AND THE PREVENTION OF FISCAL EVASION

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

The following paragraph 3 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

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,

[REPLACED by paragraph 1 of Article 6 of the MLI] [Desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income and on capital and the prevention of fiscal evasion,]

The following paragraph 1 of Article 6 of the MLI replaces the text referring to an intent to eliminate double taxation 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 the 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 and on capital imposed on behalf of a Contracting Party or of its local authorities, irrespective of the manner in which they are levied.

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

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

   (a) in the case of France:

      (i) the income tax (“l’impôt sur le revenu”);

      (ii) the corporation tax (“l’impôt sur les sociétés”);

      (iii) the contributions on corporation tax (“les contributions sur l’impôt sur les sociétés”);

      (iv) the tax on salaries (“la taxe sur les salaires”);

      (v) widespread social security contributions (“contributions sociales généralisées”) and contributions for the reimbursement of the social debt (“contributions pour le remboursement de la dette sociale”);

      (vi) the wealth tax (“l’impôt de solidarité sur la fortune”);

including any withholding tax, prepayment or advance payment with respect to the aforesaid taxes;

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

(i) profits tax;

(ii) salaries tax;

(iii) property tax;

whether or not charged under personal assessment.

4. The Agreement shall apply also to any identical or substantially similar taxes which 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 the provisions of the Agreement which a Contracting Party may impose in future. The existing taxes, together with the taxes so imposed, are hereinafter referred to as "French tax" or "Hong Kong Special Administrative Region tax" respectively. The competent authorities of the Contracting Parties shall notify each other of substantial changes which have been made in their respective taxation laws.

Article 3

General Definitions

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

(a) the term "Contracting Party" or "Party" means France or the Hong Kong Special Administrative Region, as the context requires;

(b) (i) the term "France" means the European and overseas departments of the French Republic including the territorial sea, and any area beyond the territorial sea over which the French Republic has sovereign rights and exercises its jurisdiction in accordance with international law;

(ii) the term "Hong Kong Special Administrative Region" means any territory where the tax laws of the Hong Kong Special Administrative Region apply;

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

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

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

(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 "competent authority" means:

(i) in the case of France, the Minister in charge of finance or his authorised representative;

(ii) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorised representative or any person or body authorised to perform any functions at present exercisable by the Commissioner or similar functions;

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

(j) the term "public law entity" means a statutory body which performs public functions, but does not include such a body when carrying on industrial or commercial activities.

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 which it has at that time under the laws in force 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 any person who, under the laws in force of that Party, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that Party and any local authority thereof and the public law entities of that Party or local authority. This term, however, does not include any person who is liable to tax in that Party in respect only of income from sources in that Party.

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

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

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

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

(d) if he is a national of France and has also the right of abode in the Hong Kong Special Administrative Region, or if he neither is a national of France nor has the right of abode in the Hong Kong Special Administrative Region, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting Parties, then it shall be deemed to be a resident only of the Party in which its place of effective management is situated.

Article 5

Permanent Establishment

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

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

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

(g) a building site or a construction, assembly, dredging or installation project which exists for more than six months.

3. An enterprise shall be deemed to have a permanent establishment in a Contracting Party and to carry on business through that permanent establishment if:

(a) it carries on supervisory activities in that Party for more than six months in connection with a building site, or a construction, assembly, dredging or installation project which is being undertaken in that Party; or

(b) it furnishes services, including consultancy services, directly or through employees or other personnel engaged by it for such purpose, but only where activities of that nature continue within that Party for a period of 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 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. 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 from immovable property (including income from agriculture or forestry) may be taxed in the Contracting Party in which such immovable property is situated.

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

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

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

5. Where ownership of shares, interest or other rights in a company, trust or other institution entitles the owner to the enjoyment of immovable property situated in a Contracting Party and held by that company, trust or other institution, the income that the owner derives from the direct use, letting or use in any other form of his right of enjoyment may be taxed in that Party. The provisions of this paragraph shall apply notwithstanding the provisions of Article 7.

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 independent enterprise engaged in the same or similar activities under the same or similar conditions.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting Party in which the permanent establishment is situated or elsewhere. No such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the

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

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 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. 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.

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

Article 8

Shipping and Air Transport

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

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

3. For the purpose of this Article, the term "profits" includes 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:

   (a) profits derived from the lease of ships or aircraft on a "bare-boat" charter or "dry lease" basis, where such charter or lease is incidental to the operation of ships or aircraft in international traffic;

   (b) profits derived from the sale of tickets or similar documents for and the provision of services connected with such transport, either for the enterprise itself or on behalf of any other enterprise, provided that such sale or provision is incidental to the operation of ships or aircraft in international traffic;

   (c) interest income generated in a Contracting Party from funds required for the business in that Party of operating ships or aircraft in international traffic;

   (d) profits derived from the use, maintenance or rental of containers used for the transport of goods or merchandise in international traffic, provided that such activities are incidental to the operation of ships or aircraft in international traffic.

Article 9

Associated Enterprises

1. Where:

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

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

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

2. Where a Contracting Party includes in the profits of an enterprise of that Party - and taxes accordingly - profits on which an enterprise of the other Contracting Party has been charged to tax in that other Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party shall make an appropriate adjustment to the amount of the tax charged therein on those profits if that other Party considers the adjustment justified. 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. (a) However, such dividends may also be taxed in the Contracting Party of which the company paying the dividends is a resident, and according to the laws of that Party, but if the beneficial owner of the dividends is a resident of the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

(b) 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 treated as a distribution by the taxation laws of the Contracting 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.

6. **[Replaced by paragraph 1 of Article 7 of the MLI[1]]** [The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment

[1] Refer to the box following Article 26 of the Agreement.

of the shares or other rights, in respect of which the dividend is paid, 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 Contracting Party, but if the beneficial owner of the interest is a resident of the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest derived from a Contracting Party is exempt from tax in that Party, if it is paid:

   (a) in the case of France:

      (i) to the Government of the French Republic;

      (ii) to the Bank of France;

      (iii) in respect of a debt-claim or of a loan guaranteed or insured or subsidised by the Government of the French Republic or by one other person acting on behalf of the Government of the French Republic;

      (iv) to a financial establishment appointed by the Government of the French Republic and mutually agreed upon by the competent authorities of the two Contracting Parties;

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

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

      (ii) to the Hong Kong Monetary Authority;

(iii) on a loan directly or indirectly financed or guaranteed by the Hong Kong Monetary Authority;

(iv) to a financial establishment appointed by the Government of the Hong Kong Special Administrative Region and mutually agreed upon by the competent authorities of the two Contracting Parties.

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

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

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

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

according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

8. **[Replaced by paragraph 1 of Article 7 of the MLI[2]]** [The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claims, in respect of which the interest is paid, 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 Contracting Party.

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

[2] Refer to the box following Article 26 of the Agreement.

royalties, whether a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Party in which the permanent establishment is situated.

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

7. **[Replaced by paragraph 1 of Article 7 of the MLI[3]]** [The provisions of this Article shall not apply if it was 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, to take advantage of this Article by means of that creation or assignment.]

Article 13

Capital Gains

1. (a) 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.

(b) Gains derived by a resident of a Contracting Party from the alienation of shares, interest or other rights in a company, trust or other institution deriving more than 50 per cent of their asset value, directly or indirectly, from immovable property referred to in Article 6 and situated in the other Contracting Party, or of rights connected with such immovable property, may be taxed in that other Party. However, this paragraph does not apply to gains derived from the alienation of shares, interest or other rights:

[3] Refer to the box following Article 26 of the Agreement.

(i) quoted on such stock exchange as may be agreed between the Parties;

(ii) alienated or exchanged in the framework of a reorganisation of a company, a merger, a scission or a similar operation; or

(iii) in a company more than 50 per cent of whose asset value is derived from immovable property in which it carries on its business.

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. Notwithstanding the provisions of paragraph 1, gains from the alienation of shares or rights forming part of a substantial participation in the capital of a company which is a resident of a Contracting Party may be taxed in that Party. It is considered that there is a substantial participation where the alienator, alone or with related persons, has, directly or indirectly, shares or rights, the whole of which entitles him to 25 per cent or more of the profits of the company.

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

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

6. **[Replaced by paragraph 1 of Article 7 of the MLI[4]]** [The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the alienation in respect of which the gain is realised, to take advantage of this Article by means of that alienation.]

[4] Refer to the box following Article 26 of the Agreement.

Article 14

Income from Employment

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

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

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

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

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

   (d) the remuneration is taxable in the first-mentioned Party according to the laws of that 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 the capacity of a member of the board of directors of a

company which is a resident of the other Contracting Party may be taxed in that other Party.

Article 16

Artistes and Athletes

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 an athlete, 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 an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, whether a resident of a Contracting Party or not, 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 athlete are exercised.

Article 17

Pensions

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting Party may be taxed in the Contracting Party where they arise.

2. Pensions shall be deemed to arise in a Contracting Party if paid by or out of a pension fund or other similar institution providing pension schemes in which individuals may participate in order to secure retirement benefits, where such pension fund or institution is recognised for tax purposes or regulated in accordance with the laws of that Contracting Party.

Article 18

Government Service

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting Party or a local authority thereof, or by one of their public law entities to an individual in respect of services rendered to that Party, local authority or public law entities 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 in question 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 France, is a national thereof; or

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

2. Any pension paid by, or out of funds created by, a Contracting Party or a local authority thereof or by one of their public law entities, to an individual in respect of services rendered to that Party, local authority or public law entity shall be taxable only in that Party.

3. The provisions of Articles 14, 15, 16 and 17 shall, instead of paragraphs 1 and 2 of this Article, apply to salaries, wages and other similar remuneration, and to pensions in respect of services rendered in connection with a business carried on by a Contracting Party or a local authority thereof, or by one of their public law entities.

Article 19

Students

Payments which a student, trainee or business apprentice who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party, and who is present in the first-mentioned Party solely for the purpose of his education or training, receives for the purpose of his

maintenance, education or training, shall not be taxable in that Party, provided that such payments arise from sources outside that Party.

Article 20

Other Income

1. Items of income beneficially owned by 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 beneficial owner 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 not dealt with in the foregoing Articles of this Agreement derived by a resident of a Contracting Party from sources in the other Contracting Party may also be taxed in that other Party, and according to the laws of that Party.

Article 21

Capital

1. (a) Capital represented by immovable property referred to in Article 6 may be taxed in the Contracting Party in which such immovable property is situated.

   (b) Capital represented by shares or other rights in a company, a trust or a comparable institution, the assets or property of which consist more than 50 per cent of their value of, or derive from more than 50 per cent of their value, directly or indirectly through the interposition of one or more other companies, trusts or comparable institutions, immovable property referred to in Article 6 and situated in a Contracting Party or of rights connected

with such immovable property may be taxed in that Party. For the purposes of this provision, immovable property directly used by an entity to carry on its own business shall not be taken into account.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party, may be taxed in that other Party.

3. Capital represented by property forming part of the business property of an enterprise of a Contracting Party and consisting of ships and aircraft operated by such enterprise in international traffic and of movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Party.

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

5. Notwithstanding the provisions of paragraphs 3 and 4 of this Article, elements of capital which are taxable in a Contracting Party according to those paragraphs may also be taxed in the other Contracting Party if they are not taxed in the first-mentioned Contracting Party under the ordinary rules of its tax law.

Article 22
Elimination of Double Taxation

1. In the case of France, double taxation shall be avoided as follows:

   (a) Notwithstanding any other provision of this Agreement, income which may be taxed or shall be taxable only in the Hong Kong Special Administrative Region in accordance with the provisions of the Agreement shall be taken into account for the computation of French tax where such income is not exempted from corporation tax according to French law. In that case, the Hong Kong Special Administrative Region tax shall not be deductible from such income, but the resident of France who is the beneficial owner shall, subject to the conditions and limits provided for in

sub-paragraphs (i) and (ii), be entitled to a tax credit against French tax. Such tax credit shall be equal:

(i) in the case of income other than that mentioned in sub-paragraph (ii), to the amount of French tax attributable to such income provided that the resident of France is subject to Hong Kong Special Administrative Region tax in respect of such income;

(ii) in the case of income subject to the corporation tax referred to in Article 7 and paragraph 2 of Article 13 and in the case of income referred to in Articles 10, 11 and 12, paragraphs 1 and 3 of Article 13, paragraph 3 of Article 14, Article 15, paragraphs 1 and 2 of Article 16 and paragraphs 1 and 3 of Article 20, to the amount of tax paid in the Hong Kong Special Administrative Region in accordance with the provisions of those Articles; however, such tax credit shall not exceed the amount of French tax attributable to such income.

(b) A resident of France who owns capital which may be taxed in the Hong Kong Special Administrative Region according to paragraphs 1, 2 or 3 of Article 21 shall also be taxable in France in respect of such capital. The French tax shall be computed by allowing a tax credit equal to the amount of the tax paid in the Hong Kong Special Administrative Region on such capital. However, such tax credit shall not exceed the amount of French tax attributable to such capital.

(c) (i) It is understood that the term "amount of French tax attributable to such income" as used in sub-paragraph (a) means:

- where the tax on such income is computed by applying a proportional rate, the amount of the net income concerned multiplied by the rate which actually applies to that income;

- where the tax on such income is computed by applying a progressive scale, the amount of the net income concerned multiplied by the rate resulting from the ratio of the tax actually payable on the total net income

taxable in accordance with French law to the amount of that total net income.

(ii) It is understood that the term "amount of tax paid in the Hong Kong Special Administrative Region" as used in sub-paragraph (a) means the amount of Hong Kong Special Administrative Region tax effectively and definitively borne in respect of the items of income concerned, in accordance with the provisions of the Agreement, by a resident of France who is taxed on those items of income according to the French law.

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

Subject to the provisions of the laws in force in the Hong Kong Special Administrative Region from time to time which relate to the allowance of a credit against the 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), French tax paid under the law of France and in accordance with this Agreement, whether directly or by deduction, in respect of income, profits or gains derived by a person who is a resident of the Hong Kong Special Administrative Region from sources in France, shall be allowed as a credit against Hong Kong Special Administrative Region tax payable in respect of those income, profits or gains, provided that the credit so allowed does not exceed the amount of Hong Kong Special Administrative Region tax computed in respect of the same income, profits or gains in accordance with the tax laws of the Hong Kong Special Administrative Region.

Article 23

Non-Discrimination

1. Individuals who, in the case of France, are French nationals, and, in the case of the Hong Kong Special Administrative Region, have the right of abode, 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 individuals who are nationals (in the case of France), or have the right

of abode (in the case of the Hong Kong Special Administrative Region) in the same circumstances, in particular with respect to residence, are or may be subjected.

2. The taxation of a permanent establishment that 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.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall be deductible, for the purpose of determining the taxable profits of that enterprise, 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.

5. (a) Contributions borne by an individual who renders employment services in a Contracting Party to a pension scheme recognised for tax purposes in the other Contracting Party shall be deductible, to the extent that they are not effectively allowed in the other Party, in determining the individual's taxable income in the first-mentioned Party ("that Party"), in the same way and subject to the same conditions and limitations as contributions made to a pension scheme that is recognised for tax purposes in that Party, provided that:

(i) the individual was not a resident of that Party and was participating in the pension scheme (or in another similar pension scheme for which the first-mentioned pension

scheme was substituted) immediately before he began to render employment services in that Party; and

(ii) the pension scheme is accepted by the competent authority of that Party as generally corresponding to a pension scheme recognised as such for tax purposes by that Party.

(b) For the purposes of sub-paragraph (a):

(i) the term "pension scheme" means an arrangement in which the individual participates in order to secure retirement benefits payable in respect of the employment services referred to in sub-paragraph (a); and

(ii) a pension scheme is "recognised for tax purposes" in a Party if the contributions to the scheme would qualify for tax relief in the Party concerned.

6. The exemptions and other advantages provided by the tax laws of a Contracting Party for the benefit of that Party or its local authorities or of their public law entities which carry on a non-business activity shall apply under the same conditions respectively to the other Contracting Party or its local authorities or to their public law entities which carry on the same or similar activity.

Article 24

Mutual Agreement Procedure

1. **[The first sentence of paragraph 1 of Article 24 of this Agreement is REPLACED by the first sentence of paragraph 1 of Article 16 of the MLI]** [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 laws of those Parties, present his case to the competent authority of the Contracting Party of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting Party of which he is a national (in the case of France) or in which he has the right of abode or is incorporated or otherwise constituted (in the case of the Hong Kong Special Administrative Region).] 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.

The following first sentence of paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph 1 of Article 24 of this Agreement:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

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

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 so reached shall be implemented notwithstanding any time limits in the laws of the Contracting Parties.

3. The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. In particular, they may consult together to endeavour to agree to the same allocation of income between associated enterprises mentioned in Article 9. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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

Article 25

Exchange of Information

1. The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the

provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting Parties, or of their political subdivisions or local or territorial authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.

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

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

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

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

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

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

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

Article 26

Members of Government Missions

Nothing in this Agreement shall affect the fiscal privileges of members of government missions, including consular posts, or of members of permanent missions to international organisations 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 6 of Article 10, paragraph 8 of Article 11, paragraph 7 of Article 12 and paragraph 6 of Article 13 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 the Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Agreement.

Article 27

Miscellaneous

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

Article 28

Entry into Force

1. Each of the Contracting Parties shall notify to the other in writing the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the first day of the month following the day when the later of these notifications has been received.

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

   (a) in France:

      (i) in respect of taxes on income withheld at source, for amounts taxable after the calendar year in which the Agreement enters into force;

      (ii) in respect of taxes on income which are not withheld at source, for income relating, as the case may be, to any calendar year or accounting period beginning after the calendar year in which the Agreement enters into force;

      (iii) in respect of the other taxes, for taxation the taxable event of which will occur after the calendar year in which the Agreement enters into force;

   (b) 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 Agreement enters into force.

Article 29

Termination

1. This Agreement shall remain in force indefinitely. However, after a period of five calendar years from the date on which the Agreement enters into force, either Contracting Party may terminate it by giving

written notice of termination at least six months before the end of any calendar year.

2. In such event, the Agreement shall cease to have effect:

(a) in France:

(i) in respect of taxes on income withheld at source, for amounts taxable after the calendar year in which the notice of termination is given;

(ii) in respect of taxes on income which are not withheld at source, for income relating, as the case may be, to any calendar year or accounting period beginning after the calendar year in which the notice of termination is given;

(iii) in respect of the other taxes, for taxation the taxable event of which occurs after the calendar year in which the notice of termination is given;

(b) 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.

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

DONE in duplicate at Paris, this 21st day of October 2010, in the English and French languages, both texts being equally authentic.

[SIGNED]

PROTOCOL

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 French Republic for the avoidance of double taxation with respect to taxes on income and on capital and the prevention of fiscal evasion (the "Agreement"), the two Governments have agreed on the following provisions which shall form an integral part of the Agreement.

1. Notwithstanding the provisions of Article 1, a resident of a Contracting Party may not benefit from the provisions of the Agreement to the extent that he carries on business in a tax free zone situated in that Party or enjoys in that Party an offshore tax treatment. It is understood that this does not preclude a resident of a Contracting Party from benefiting from the provisions of the Agreement by reason of the adoption of a territorial source principle in the taxation system of that Party.

2. In respect of sub-paragraph (a) of paragraph 3 of Article 2, the tax on salaries is regulated by the provisions of the Agreement applicable to business profits.

3. The term "Hong Kong Special Administrative Region tax" as defined in paragraph 4 of Article 2 does not include 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.

4. The term "resident of a Contracting Party" as defined in paragraph 1 of Article 4 shall include, where that Party is France, any partnership or group of persons, subject under French domestic law to a tax regime being substantially similar to that of a partnership, which has its place of effective management in France and of which all shareholders, associates or other members are personally liable to tax therein in respect of their part of the profits of those partnerships or groups of persons pursuant to French domestic laws.

5. In respect of paragraph 1 of Article 4, in the case of the Hong Kong Special Administrative Region, the term "resident of a Contracting Party" shall mean:

   (a) any individual who ordinarily resides in the Hong Kong Special Administrative Region in a year of assessment;

(b) 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;

(c) any 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;

(d) any other person constituted under the laws in force in 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.

The last sentence of that paragraph does not preclude a person from being treated as a resident of a Contracting Party by reason of a territorial source principle in the taxation system of that Party.

6. It is understood that the term "immovable property" as defined in paragraph 2 of Article 6 includes options and similar rights in connection with such property.

7. In respect of Article 7:

(a) where an enterprise of a Contracting Party sells goods or merchandise or carries on business in the other Contracting Party through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise but only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business;

(b) in the case of contracts, in particular for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, where the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but only on the basis of that part of the contract which is effectively carried out by the permanent

establishment in the Contracting Party where it is situated. The profits related to the part of the contract which is carried out in the Contracting Party where the place of effective management of the enterprise is situated shall be taxable only in that Party.

8. It is understood that, in respect of Article 12, payments received as a consideration for technical services, including studies or surveys of a scientific, geological or technical nature, or for engineering services including preparation of blueprints, or for consultant or supervisory services, are not payments received as a consideration for information concerning industrial, commercial or scientific experience. It is also understood that payments received as a consideration for the right to distribute software do not represent a royalty as long as they do not include the right to reproduce this software. Such payments would be dealt with as commercial income in accordance with Article 7.

9. In respect of paragraph 1 of Article 13:

(a) The following stock exchanges have been agreed between the Contracting Parties for the purposes of sub-paragraph (b)(i):

- regulated stock exchanges of members of the European Union

- The Stock Exchange of Hong Kong Limited

(b) In the case of France, the operations referred to in sub-paragraph (b)(ii) are limited to those of similar nature as the ones defined in the 90/434/CEE directive adopted by the Council of Ministers of the European Union on 23 July 1990.

10. It is understood that Article 25 does not create obligations as regards automatic or spontaneous exchanges of information between the Contracting Parties. In respect of the same Article, it is also understood that information requested shall not be disclosed to a third jurisdiction. In the case of the Hong Kong Special Administrative Region, the judicial decisions in which information may be disclosed include the decisions of the Board of Review.

11. Where under any provision of the Agreement any income is relieved from tax in a Contracting Party and, under the domestic law in force in the other Contracting Party, a person, in respect of that income, is subject

to tax by reference to the amount thereof which 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 the Agreement in the first-mentioned Party shall apply only to so much of the income as is taxed in the other Party.

12. Each of the Contracting Parties shall keep the right of taxing in accordance with its domestic law any income of its residents, the exclusive taxing right of which is allocated to the other Contracting Party under the Agreement, but which is not taken into account in the tax base in that other Party, in cases where such double exemption results from a divergent classification of the income concerned.

13. The competent authorities of the Contracting Parties may settle jointly or separately administrative measures necessary to carry out the provisions of the Agreement.

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

DONE in duplicate at Paris, this 21st day of October 2010, in the English and French languages, both texts being equally authentic.

[SIGNED]