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 JAPAN 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 Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 9 November 2010 and the Notes exchanged on 10 December 2014 (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 Japan 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 Japan 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 Japan 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 Japan 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 Japan

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 Japan:

(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 Japan, 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 JAPAN 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 Japan,

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 and the prevention of fiscal evasion with respect to taxes on income,]

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 imposed on behalf of a Contracting Party or a political subdivision or local authority thereof, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of any 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 this Agreement shall apply are:

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

      (i) profits tax;

      (ii) salaries tax; and

      (iii) property tax;

      whether or not charged under personal assessment; and

   (b) in the case of Japan:

      (i) the income tax;

      (ii) the corporation tax; and

      (iii) the local inhabitant taxes.

4. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in

addition to, or in place of, the existing taxes referred to in paragraph 3, as well as any other taxes falling within paragraphs 1 and 2 which may be imposed in future. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their taxation laws.

5. For the purposes of this Agreement, the terms "Hong Kong Special Administrative Region tax" and "Japanese tax" mean respectively the taxes imposed on behalf of the Hong Kong Special Administrative Region and the taxes imposed on behalf of Japan, and also include taxes imposed on behalf of a political subdivision or local authority of the respective Contracting Parties, as referred to in the preceding paragraphs of this Article.

Article 3
GENERAL DEFINITIONS

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

   (a) the term "Hong Kong Special Administrative Region", when used in a geographical sense, means the land and sea comprised within the boundary of the Hong Kong Special Administrative Region of the People's Republic of China, including Hong Kong Island, Kowloon, the New Territories and the waters of Hong Kong, and any other place where the tax laws of the Hong Kong Special Administrative Region of the People's Republic of China apply;

   (b) the term "Japan", when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the seabed and subsoil thereof, over which Japan has sovereign rights in accordance with international law and in which the laws relating to Japanese tax are in force;

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

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

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

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

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

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

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

(j) the term "national" means, in the case of Japan, any individual possessing the nationality of Japan, any juridical person created or organised under the laws of Japan and any organisation without juridical personality treated for the purposes of Japanese tax as a juridical person created or organised under the laws of Japan;

(k) the term "competent authority" means:

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

(ii) in the case of Japan, the Minister of Finance or his authorised representative; and

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

Article 4

RESIDENT

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

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

      (i) any individual who ordinarily resides in the Hong Kong Special Administrative Region, provided that the individual has a substantial presence, permanent home or habitual abode in the Hong Kong Special Administrative Region, and that he has personal and economic relations with 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, provided that he has personal and economic relations with the Hong Kong Special Administrative Region;

      (iii) a company having a primary place of management and control in the Hong Kong Special Administrative Region; and

      (iv) any other person having a primary place of management and control in the Hong Kong Special Administrative Region;

(b) in the case of Japan, any person who, under the laws of Japan, is liable to tax therein by reason of his domicile, residence, place of head or main office or any other criterion of a similar nature, except any person who is liable to tax in Japan in respect only of income from sources in Japan; and

(c) the Government of a Contracting Party or a political subdivision or local authority thereof.

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

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

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

(c) if he has an habitual abode in both Contracting Parties or in neither of them, 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 the competent authorities of the Contracting Parties shall determine by mutual agreement the Contracting Party of which that person shall be deemed to be a resident for the purposes of this Agreement. In the absence of a mutual agreement by the competent authorities of the Contracting Parties, the person shall not be considered a resident of either Contracting Party for the purposes of claiming any benefits provided by the Agreement, except those provided by Articles 23 and 24.

Article 5

PERMANENT ESTABLISHMENT

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

2. The term "permanent establishment" includes especially:

   (a) a place of management;

   (b) a branch;

   (c) an office;

   (d) a factory;

   (e) a workshop; and

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

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

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

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

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

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

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

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

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in 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 the provisions of paragraph 6 apply - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting Party an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Contracting Party in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting Party merely because it carries on business in that Contracting Party through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting Party controls or is controlled by a company which is a resident of the other Contracting Party, or which carries on business in that other Contracting Party (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

INCOME FROM IMMOVABLE PROPERTY

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

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

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

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

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

Article 7

BUSINESS PROFITS

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

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

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

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

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

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

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

Article 8

INTERNATIONAL TRAFFIC

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

2. Notwithstanding the provisions of Article 2, where an enterprise of a Contracting Party carries on the operation of ships or aircraft in international traffic, that enterprise, if an enterprise of the Hong Kong Special Administrative Region, shall be exempt from the enterprise tax of Japan, and, if an enterprise of Japan, shall be exempt from any tax similar to the enterprise tax of Japan which may hereafter be imposed in the Hong Kong Special Administrative Region.

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

Article 9

ASSOCIATED ENTERPRISES

1. Where

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

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

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

2. Where a Contracting Party includes, in accordance with the provisions of paragraph 1, in the profits of an enterprise of that Contracting Party - and taxes accordingly - profits on which an enterprise of the other Contracting Party has been charged to tax in that other Contracting Party and where the competent authorities of the Contracting Parties agree, upon consultation, that all or part of the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting Party shall make an appropriate adjustment to the amount of the tax charged therein on those agreed profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement.

3. Notwithstanding the provisions of paragraph 1, a Contracting Party shall not change the profits of an enterprise of that Contracting Party in the circumstances referred to in that paragraph after seven years from the end of the taxable year in which the profits that would be subjected to such change would, but for the conditions referred to in that paragraph, have accrued to that enterprise. The provisions of this paragraph 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 Contracting Party to a resident of the other Contracting Party may be taxed in that other Contracting Party.

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

   (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company that has owned directly or indirectly, for the period of six months ending on the date on which entitlement to the dividends is determined, at least 10 per cent of the voting shares of the company paying the dividends; or

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

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

3. The provisions of subparagraph (a) of paragraph 2 shall not apply in the case of dividends paid by a company which is entitled to a deduction for dividends paid to its beneficiaries in computing its taxable income in Japan.

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

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

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

Article 11

INTEREST

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

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

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting Party shall be taxable only in the other Contracting Party if:

   (a) the interest is beneficially owned by the Government of that other Contracting Party, a political subdivision or local authority thereof, or the central bank of that other Contracting Party or any institution wholly owned or funded by that Government; or

   (b) the interest is beneficially owned by a resident of that other Contracting Party with respect to debt-claims guaranteed, insured or indirectly financed by the Government of that other Contracting Party, a political subdivision or local authority thereof, or the central bank of that other Contracting Party or any institution wholly owned or funded by that Government.

4. For the purposes of paragraph 3, the terms "the central bank" and "institution wholly owned or funded by that Government" mean:

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

   the Hong Kong Monetary Authority;

   (b) in the case of Japan:

      (i) the Bank of Japan;

      (ii) the Japan Finance Corporation;

      (iii) the Japan International Cooperation Agency; and

(iv) the Nippon Export and Investment Insurance; and

(c) such other similar institution which is wholly owned or funded by the Government of a Contracting Party as may be agreed upon from time to time between the Governments of both Contracting Parties.

5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, and all other income that is subjected to the same taxation treatment as income from money lent by the tax laws of the Contracting Party in which the income arises. Income dealt with in Article 10 shall not be regarded as interest for the purposes of this Agreement.

6. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the interest arises through a permanent establishment situated therein 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.

7. Interest shall be deemed to arise in a Contracting Party when the payer is a resident of that Contracting Party. Where, however, the person paying the interest, whether he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting 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 such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

Article 12
ROYALTIES

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

2. However, such royalties may also be taxed in the Contracting Party in which they arise and according to the laws of that Contracting Party, but if the beneficial owner of the royalties is a resident of the other Contracting Party, the tax so charged shall not exceed 5 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 for radio or television broadcasting, any patent, trade mark, design or model, plan, or 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 Contracting Party. Where, however, the person paying the royalties, whether he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting Party in which the permanent establishment is situated.

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

Article 13
CAPITAL GAINS

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

2. Gains derived by a resident of a Contracting Party from the alienation of shares in a company or of interests in a partnership or trust may be taxed in the other Contracting Party where the shares or the interests derive at least 50 per cent of their value directly or indirectly from immovable property referred to in Article 6 and situated in that other Contracting Party, unless the relevant class of the shares or the interests is traded on a recognised stock exchange and the resident and persons related or connected to that resident own in the aggregate 5 per cent or less of that class of the shares or the interests.

3. (a) Where

    (i) a Contracting Party (including, for this purpose in the case of Japan, the Deposit Insurance Corporation of Japan) provides, pursuant to the laws of that Contracting Party concerning failure resolution involving imminent insolvency of financial institutions, substantial financial assistance to a financial institution that is a resident of that Contracting Party, and

(ii) a resident of the other Contracting Party acquires shares in the financial institution from the first-mentioned Contracting Party,

the first-mentioned Contracting Party may tax gains derived by the resident of the other Contracting Party from the alienation of such shares, provided that the alienation is made within five years from the first date on which such financial assistance was provided.

(b) The provisions of subparagraph (a) shall not apply if the resident of that other Contracting Party acquired any shares in the financial institution from the first-mentioned Contracting Party before entry into force of this Agreement or pursuant to a binding contract entered into before entry into force of the Agreement.

4. Notwithstanding the provisions of paragraphs 2 and 3, gains from the alienation of any property, other than immovable property, forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other Contracting Party.

5. Gains derived by an enterprise of a Contracting Party from the alienation of ships or aircraft operated by that enterprise in international traffic or any property, other than immovable property, pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting Party.

6. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article shall be taxable only in the Contracting Party of which the alienator is a resident.

Article 14

INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting Party in respect of an employment shall be taxable only in that Contracting

Party unless the employment is exercised in the other Contracting Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting Party.

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

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

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

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

3. Notwithstanding the preceding paragraphs 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 Contracting Party.

Article 15

DIRECTORS' FEES

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

Article 16

ARTISTES AND SPORTSMEN

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a

sportsman, from his personal activities as such exercised in the other Contracting Party, may be taxed in that other Contracting Party.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting Party in which the activities of the entertainer or sportsman are exercised.

Article 17

PENSIONS AND ALIMONY

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration beneficially owned by a resident of a Contracting Party shall be taxable only in that Contracting Party.

2. Alimony or any other similar payments for the maintenance paid by a resident of a Contracting Party to a resident of the other Contracting Party shall be taxable only in the first-mentioned Contracting Party. However, such payments shall not be taxable in either Contracting Party if the individual making such payments is not entitled to a deduction for such payments in computing taxable income in the first-mentioned Contracting Party.

Article 18

GOVERNMENT SERVICE

1. Salaries, wages and other similar remuneration paid by the Government of a Contracting Party or a political subdivision or local authority thereof to an individual in respect of services rendered to the Government of that Contracting Party or a political subdivision or local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in that Contracting Party. However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that other Contracting Party and the individual is a resident of that other Contracting Party who did not become a resident of that other Contracting Party solely for the purpose of rendering the services.

2. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created or to which contributions are made by, the Government of a Contracting Party or a political subdivision or local authority thereof to an individual in respect of services rendered to the Government of that Contracting Party or a political subdivision or local authority thereof shall be taxable only in that Contracting Party.

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

Article 19

STUDENTS

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

Article 20

SLEEPING PARTNERSHIP

Notwithstanding any other provisions of this Agreement, any income and gains derived by a sleeping partner in respect of a sleeping partnership (Tokumei Kumiai) contract or other similar contract may be taxed in the Contracting Party in which such income and gains arise and according to the laws of that Contracting Party.

Article 21

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 (hereinafter referred to as "other income" in this Article) shall be taxable only in that Contracting Party.

2. The provisions of paragraph 1 shall not apply to other income, other than income from immovable property as defined in paragraph 2 of Article 6, if the beneficial owner of such other 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 other income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

3. Where, by reason of a special relationship between the resident referred to in paragraph 1 and the payer or between both of them and some other person, the amount of other income exceeds the amount which would have been agreed upon between them in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

Article 22

ELIMINATION OF DOUBLE TAXATION

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

of Hong Kong Special Administrative Region tax computed in respect of that income in accordance with the tax laws of the Hong Kong Special Administrative Region.

2. Subject to the provisions of the laws of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan, where a resident of Japan derives income from the Hong Kong Special Administrative Region which may be taxed in the Hong Kong Special Administrative Region in accordance with the provisions of this Agreement, the amount of Hong Kong Special Administrative Region tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax which is appropriate to that income.

3. For the purposes of the preceding paragraphs of this Article, income beneficially owned by a resident of a Contracting Party which may be taxed in the other Contracting Party in accordance with the provisions of this Agreement shall be deemed to arise from sources in that other Contracting Party.

Article 23

NON-DISCRIMINATION

1. Persons who have the right of abode or are incorporated or constituted in the Hong Kong Special Administrative Region, or who are nationals of Japan, shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which persons who are in the same circumstances, in particular with respect to residence, and, where that other Contracting Party is the Hong Kong Special Administrative Region, have the right of abode or are incorporated or constituted therein or, where that other Contracting Party is Japan, are nationals of Japan, are or may be subjected. The provisions of this paragraph shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting Parties.

2. Stateless persons who are residents of a Contracting Party shall not be subjected in either Contracting Party to any taxation or any requirement

connected therewith, which is other or more burdensome than the taxation and connected requirements to which persons who are in the same circumstances, in particular with respect to residence, and have the right of abode in the Hong Kong Special Administrative Region or are nationals of Japan, are or may be subjected.

3. The taxation on a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party shall not be less favourably levied in that other Contracting Party than the taxation levied on enterprises of that other Contracting Party carrying on the same activities. The provisions of this paragraph shall not be construed as obliging a Contracting Party to grant to residents of the other Contracting Party any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 8 of Article 11, paragraph 6 of Article 12 or paragraph 3 of Article 21 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting Party.

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

6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description imposed by a Contracting Party or a political subdivision or local authority thereof.

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 domestic laws of those Contracting 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 Hong Kong Special Administrative Region, where he has the right of abode or is incorporated or constituted therein, or to that of Japan, where he is a national of Japan.] 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 provisions of this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic 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 this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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

5. Where,

(a) under paragraph 1, a person has presented a case to the competent authority of a Contracting Party on the basis that the actions of one or both of the Contracting Parties have resulted for that person in taxation not in accordance with the provisions of this Agreement, and

(b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting Party,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either Contracting Party. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting Parties and shall be implemented notwithstanding any time limits in the domestic laws of these Contracting Parties. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this paragraph.

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 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 Contracting Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1. 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. The information shall not be disclosed to any other person or authority, including those in places other than the Contracting Parties, for any purpose.

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

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

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

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

4. If information is requested by a Contracting Party in accordance with this Article, the other Contracting Party shall use its information gathering measures to obtain the requested information, even though that other Contracting Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 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

LIMITATION OF RELIEF

[REPLACED by paragraph 1 of Article 7 of the MLI] [No relief shall be available under the provisions of paragraph 2 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12, paragraph 6 of Article 13 or paragraph 1 of Article 21, if the main purpose of any person concerned with the creation or assignment of any right or property in respect of which income arises was to take advantage of such provisions by means of that creation or assignment.]

The following paragraph 1 of Article 7 of the MLI replaces Article 26 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 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

FISCAL PRIVILEGES

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

Article 28

HEADINGS

The headings of the Articles of this Agreement are inserted for convenience of reference only and shall not affect the interpretation of the Agreement.

Article 29

ENTRY INTO FORCE

1. Each of the Governments of the Contracting Parties shall send to the other a notification confirming that its internal procedures necessary for entry into force of this Agreement have been completed. The Agreement shall enter into force on the thirtieth day after the date of receipt of the later notification.

2. The provisions of this Agreement shall have effect:

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

   with respect to 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; and

   (b) in the case of Japan:

   (i) with respect to taxes withheld at source, for amounts taxable on or after 1 January in the calendar year next following that in which the Agreement enters into force;

(ii) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after 1 January in the calendar year next following that in which the Agreement enters into force; and

(iii) with respect to other taxes, as regards taxes for any taxable year beginning on or after 1 January in the calendar year next following that in which the Agreement enters into force.

Article 30

TERMINATION

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

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

with respect to 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; and

(b) in the case of Japan:

(i) with respect to taxes withheld at source, for amounts taxable on or after 1 January in the calendar year next following that in which the notice is given;

(ii) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after 1 January in the calendar year next following that in which the notice is given; and

(iii) with respect to other taxes, as regards taxes for any taxable year beginning on or after 1 January in the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Hong Kong this 9th day of November, 2010 in the Chinese, Japanese and English languages, all three texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

[SIGNED]

Protocol

At the 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 Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as "the Agreement"), the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Japan have agreed upon the following provisions, which shall form an integral part of the Agreement.

1. With reference to subparagraph (d) of paragraph 1 of Article 3 of the Agreement, it is understood that the term "tax" shall not include any amount which represents a penalty or interest imposed under the laws of the Hong Kong Special Administrative Region or Japan relating to the taxes to which the Agreement applies.

2. With reference to subparagraph (e) of paragraph 1 of Article 3 of the Agreement, it is understood that the term "any other body of persons" includes a trust and a partnership.

3. With reference to clauses (iii) and (iv) of subparagraph (a) of paragraph 1 of Article 4 of the Agreement, it is understood that the term "a primary place of management and control" means a place where executive officers and senior management employees of a company or any other person make day-to-day key decisions for the strategic, financial and operational policies for the company or the person, and the staff of such company or person conduct the day-to-day activities necessary for making those decisions.

4. With reference to paragraph 2 of Article 13 of the Agreement, it is understood that the term "recognised stock exchange" means:

   (a) any stock exchange established by the Stock Exchange of Hong Kong Limited;

   (b) any stock exchange established by a Financial Instruments Exchange or an approved-type financial instruments firms association under the Financial Instruments and Exchange Law (Law No. 25 of 1948) of Japan; and

(c) any other stock exchange which the competent authorities of the Contracting Parties agree to recognise for the purposes of that paragraph.

5. With reference to paragraph 1 of Article 17 of the Agreement, it is understood that the term "pensions and other similar remuneration" includes pensions and other similar remuneration paid in consideration of past employment or self-employment and social security pensions.

6. With reference to paragraph 5 of Article 24 of the Agreement:

(a) The competent authorities shall by mutual agreement establish a procedure which ensures that, except where actions or inaction of a person directly affected by the case hinder the resolution of the case or where the competent authorities and that person agree otherwise, an arbitration decision will be implemented within two years from a request for arbitration as referred to in paragraph 5 of Article 24 of the Agreement.

(b) An arbitration panel shall be established in accordance with the following rules:

(i) An arbitration panel shall consist of three arbitrators with expertise or experience in international tax matters.

(ii) Each competent authority shall appoint one arbitrator. The two arbitrators appointed by the competent authorities shall appoint the third arbitrator who serves as the chair of the arbitration panel in accordance with the procedures agreed by the competent authorities.

(iii) All arbitrators shall not be employees of the tax authorities of either of the Contracting Parties, nor shall they have previously dealt with the case presented pursuant to paragraph 1 of Article 24 of the Agreement in any capacity.

(iv) The competent authorities shall ensure that all arbitrators and their staff agree, in statements sent to each competent authority, prior to their acting in the arbitration proceedings, to comply with the same confidentiality and

non-disclosure obligations provided for in paragraph 2 of Article 25 of the Agreement and under the applicable domestic laws of the Contracting Parties.

(v) Each competent authority shall bear the cost of its appointed arbitrator and its own expenses related to its own participation in the arbitration proceedings. The cost of the chair of the arbitration panel and other expenses associated with the conduct of the proceedings shall be borne by the competent authorities in equal shares.

(c) The competent authorities shall provide the information necessary for the making of the arbitration decision to all arbitrators and their staff without undue delay.

(d) An arbitration decision shall be final, unless that decision is found to be unenforceable by the courts of one of the Contracting Parties due to a violation of paragraph 5 of Article 24 of the Agreement, of this paragraph or of any procedural rule determined in accordance with this paragraph that may reasonably have affected the decision. If the decision is found to be unenforceable due to such violation, the decision shall be considered not to have been made.

(e) An arbitration decision shall have no formal precedential value.

(f) Where, at any time after a request for arbitration has been made and before the arbitration panel has delivered a decision to the competent authorities and the person who made the request for arbitration, the competent authorities have solved all the unresolved issues submitted to the arbitration, the case shall be considered as solved pursuant to paragraph 2 of Article 24 of the Agreement and no arbitration decision shall be provided.

7. With reference to paragraph 1 of Article 25 of the Agreement, a Contracting Party is not obliged to exchange information concerning taxes other than those covered by Article 2 of the Agreement for the purposes of carrying out the provisions of the Agreement or of the administration or enforcement of the domestic laws of the other Contracting Party until the Governments of the Contracting Parties agree, through an exchange of notes, to exchange information

concerning those taxes. Such agreement shall enter into force after the completion of procedures required by the respective laws of the Contracting Parties for entry into force of the agreement.

8. With reference to paragraph 5 of Article 25 of the Agreement, it is understood that a Contracting Party may decline to supply information relating to confidential communications between attorneys, solicitors or other admitted legal representatives in their role as such and their clients to the extent that the communications are protected from disclosure under the domestic laws of that Contracting Party.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at Hong Kong this 9th day of November, 2010 in the Chinese, Japanese and English languages, all three texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

[SIGNED]

Exchange of Notes

Note dated 10 December 2014 from Consul-General of Japan in Hong Kong to Secretary for Financial Services and the Treasury

Sir,

I have the honour to refer to the Agreement between the Government of Japan and the Government of the Hong Kong Special Administrative Region of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Hong Kong on 9 November 2010 (hereinafter referred to as "the Agreement") as well as the Protocol which forms an integral part of the Agreement signed at Hong Kong on 9 November 2010 (hereinafter referred to as "the Protocol") and to confirm, on behalf of the Government of Japan, the following understanding reached between the two Governments:

With reference to paragraph 1 of Article 25 of the Agreement and paragraph 7 of the Protocol, it is understood that information concerning the following taxes shall be exchanged in accordance with the provisions of Article 25 of the Agreement:

(a) the taxes covered by Article 2 of the Agreement; and

(b) the following taxes of Japan:

(i) the inheritance tax;

(ii) the gift tax;

(iii) the consumption tax; and

(iv) any identical or substantially similar taxes that are imposed after the date of signature of this Note in addition to, or in place of, the existing taxes referred to in (i), (ii) and (iii).

I have further the honour to propose that the present Note and your Note in reply confirming, on behalf of the Government of the Hong Kong Special Administrative Region of the People's Republic of China, the foregoing understanding shall constitute an agreement between the two Governments under paragraph 7 of the Protocol.

I have further the honour to propose that each of the two Governments shall send to the other a notification confirming that its internal procedures necessary for the entry into force of this agreement have been completed, and that the agreement shall enter into force on the date of receipt of the later notification and have effect:

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

with respect to Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after the date on which this agreement enters into force; and

(b) in the case of Japan:

(i) with respect to taxes withheld at source, for amounts taxable on or after the date on which this agreement enters into force;

(ii) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after the date on which this agreement enters into force; and

(iii) with respect to other taxes, as regards taxes for any taxable year beginning on or after the date on which this agreement enters into force.

I avail myself of this opportunity to extend to you the assurance of my high consideration.

Hitoshi Noda
Consul-General of Japan in Hong Kong

Professor K C Chan
Secretary for Financial Services and the Treasury
The Government of the Hong Kong Special Administrative Region of the People's Republic of China

Note dated 10 December 2014 from Secretary for Financial Services and the Treasury to Consul-General of Japan in Hong Kong

Sir,

I have the honour to acknowledge the receipt of your Note of today's date which reads as follows:

"I have the honour to refer to the Agreement between the Government of Japan and the Government of the Hong Kong Special Administrative Region of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Hong Kong on 9 November 2010 (hereinafter referred to as "the Agreement") as well as the Protocol which forms an integral part of the Agreement signed at Hong Kong on 9 November 2010 (hereinafter referred to as "the Protocol") and to confirm, on behalf of the Government of Japan, the following understanding reached between the two Governments:

With reference to paragraph 1 of Article 25 of the Agreement and paragraph 7 of the Protocol, it is understood that information concerning the following taxes shall be exchanged in accordance with the provisions of Article 25 of the Agreement:

(a) the taxes covered by Article 2 of the Agreement; and

(b) the following taxes of Japan:

  (i) the inheritance tax;

  (ii) the gift tax;

  (iii) the consumption tax; and

  (iv) any identical or substantially similar taxes that are imposed after the date of signature of this Note in addition to, or in place of, the existing taxes referred to in (i), (ii) and (iii).

I have further the honour to propose that the present Note and your Note in reply confirming, on behalf of the Government of the Hong Kong Special Administrative Region of the People's Republic of China, the foregoing understanding shall constitute an agreement between the two Governments under paragraph 7 of the Protocol.

I have further the honour to propose that each of the two Governments shall send to the other a notification confirming that its internal procedures necessary for the entry into force of this agreement have been completed, and that the agreement shall enter into force on the date of receipt of the later notification and have effect:

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

with respect to Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after the date on which this agreement enters into force; and

(b) in the case of Japan:

(i) with respect to taxes withheld at source, for amounts taxable on or after the date on which this agreement enters into force;

(ii) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after the date on which this agreement enters into force; and

(iii) with respect to other taxes, as regards taxes for any taxable year beginning on or after the date on which this agreement enters into force."

The foregoing understanding being acceptable to the Government of the Hong Kong Special Administrative Region of the People's Republic of China, I have further the honour to confirm that your Note and this Note in reply shall constitute an agreement between the two Governments.

I have further the honour to confirm that this agreement shall enter into force and have effect as you proposed.

I avail myself of this opportunity to extend to you the assurance of my high consideration.

Professor K C Chan
Secretary for Financial Services
and the Treasury
The Government of the Hong Kong
Special Administrative Region
of the People's Republic of China

Mr Hitoshi Noda
Consul-General of Japan in Hong Kong