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 REPUBLIC OF KOREA 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 the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 8 July 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 the Republic of Korea 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 Republic of Korea on 13 May 2020. 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 Republic of Korea on 13 May 2020 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 Republic of Korea 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 September 2020 for the Republic of Korea

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 Republic of Korea:

(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 Republic of Korea, 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 REPUBLIC OF KOREA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

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

[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 of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, 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 the Hong Kong Special Administrative Region,

      (i) profits tax;

      (ii) salaries tax; and

      (iii) property tax;

      whether or not charged under personal assessment;

   (b) in the case of Korea,

      (i) the income tax;

      (ii) the corporation tax;

      (iii) the special tax for rural development; and

(iv) the local income tax.

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

5. The existing taxes referred to in paragraph 3, together with the taxes imposed after the signature of this Agreement, are hereinafter referred to as "Hong Kong Special Administrative Region tax" or "Korean tax", as the context requires.

Article 3

General Definitions

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

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

(b) the term "Korea" means the Republic of Korea, and when used in a geographical sense, the territory of the Republic of Korea including its territorial sea, and any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign right or jurisdiction of the Republic of Korea with respect to the sea-bed and sub-soil, and their natural resources may be exercised;

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

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

(e) the term "annuities" means a lump sum payment, or a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make payments in return for adequate and full consideration in money or money's worth;

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

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

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

(i) 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;

(j) 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;

(k) the term "competent authority" means:

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

(ii) in the case of Korea, the Minister of Strategy and Finance or the Minister's authorized representative;

(l) the term "national", in relation to Korea means:

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

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

(m) 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 law of that Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 4

Resident

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

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

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

(ii) any individual who stays in the Hong Kong Special Administrative Region for more than 180 days during a year of assessment or for more than 300 days in two consecutive years of assessment one of which is the relevant year of assessment;

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

(iv) any other person constituted under the laws of the Hong Kong Special Administrative Region or, if constituted outside the Hong Kong Special Administrative Region, being centrally managed and controlled in the Hong Kong Special Administrative Region;

(b) in the case of Korea, any person who, under the laws of Korea, is liable to tax therein by reason of his domicile, residence, place of head or main office, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in Korea in respect only of income from sources in Korea;

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

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

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

(d) if he has the right of abode in the Hong Kong Special Administrative Region and is also a national of Korea, or if he does not have the right of abode in the Hong Kong Special Administrative Region nor is he a national of Korea, 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. In case of doubt, the competent authorities of the Contracting Parties shall endeavour by mutual agreement to determine the Party in which that person's place of effective management is situated, and in doing so, shall take into account all relevant factors. In the absence of such agreement, that person shall not be entitled to claim any benefits provided by this Agreement, except those provided by Articles 21, 22 and 23.

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, assembly or installation project or supervisory activities in connection therewith constitute a permanent establishment only if such site, project or activities last 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 paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting Party an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Party in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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

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

Article 6

Income from Immovable Property

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

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting Party in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, 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.

Article 7

Business Profits

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

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

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

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

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

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

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

Article 8

Shipping and Air Transport

1. Profits from the operation of ships or aircraft in international traffic carried on 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 from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated Enterprises

1. Where

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

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

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

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

Article 10

Dividends

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

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

   (a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;

(b) 15 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of these limitations.

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

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

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

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

Article 11

Interest

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

2. However, such interest may also be taxed in the Contracting Party in which it arises and according to the laws of that Party, but if the beneficial owner of the interest is a resident of the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this limitation.

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

(a) 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) to any institution wholly or mainly owned by the Government of the Hong Kong Special Administrative Region as may be agreed from time to time between the competent authorities of the Contracting Parties;

(b) in the case of Korea:

(i) to the Government of the Republic of Korea;

(ii) to the Bank of Korea;

(iii) to the Korea Export-Import Bank;

(iv) to any institution wholly or mainly owned by the Government of the Republic of Korea as may be agreed from time to time between the competent authorities of the Contracting Parties.

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

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

Article 12

Royalties

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

2. However, such royalties may also be taxed in the Contracting Party in which they arise and according to the laws of that Party, but if the beneficial owner of the royalties is a resident of the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this limitation.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

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

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

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, 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 Party.

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

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

4. Gains derived by a resident of a Contracting Party from the alienation of shares of a company deriving more than 50 per cent of its asset value directly or indirectly from immovable property situated in the other Contracting Party may be taxed in that other Party.

5. Gains sourced in a Contracting Party from the alienation of any property other than those referred to in paragraphs 1, 2, 3 and 4 and derived by a resident of the other Contracting Party may be taxed in the first-mentioned Party.

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 or fiscal year concerned, and

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

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

3. Notwithstanding the preceding provisions, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting Party shall be taxable only in that Party.

Article 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 Party.

Article 16

Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting Party, may be taxed in that other Party.

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

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by a resident of a Contracting Party from activities exercised in the other Contracting Party shall be exempt from tax in that other Party if the visit to the other Party is supported wholly or mainly by public funds of the first-mentioned Party or a political subdivision or a local authority thereof, or takes place under a cultural agreement or arrangement between the governments of the Contracting Parties.

Article 17

Pensions

Pensions and other similar remuneration (including a lump sum payment) arising in a Contracting Party and paid to a resident of the other Contracting Party in consideration of past employment or self-employment and social security pensions shall be taxable only in the first-mentioned Party.

Article 18

Government Service

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

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that Party and the individual is a resident of that Party who:

(i) in the case of the Hong Kong Special Administrative Region, has the right of abode therein and in the case of Korea, is a national thereof; or

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

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

Article 19

Students

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

Article 20

Other Income

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

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

3. Notwithstanding the provisions of paragraph 1, annuities arising in a Contracting Party and paid to a resident of the other Contracting Party shall be taxable only in the first-mentioned Party.

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

Article 21

Methods for Elimination of Double Taxation

1. Subject to the provisions of the laws of the Hong Kong Special Administrative Region relating to the allowance of a credit against Hong Kong Special Administrative Region tax of tax paid in a jurisdiction outside the Hong Kong Special Administrative Region (which shall not affect the general principle of this Article), Korean tax paid under the laws of Korea 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 Korea, 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 Korean tax law regarding the allowance as credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle thereof);

   (a) where a resident of Korea derives income from the Hong Kong Special Administrative Region which may be taxed in the Hong Kong Special Administrative Region under the laws of the Hong Kong Special Administrative Region in accordance with the provisions of this Agreement, in respect of that income, the amount of the Hong Kong Special Administrative Region tax payable shall be allowed as a credit against the Korean tax payable imposed on that resident. The amount of credit shall not, however, exceed that part of Korean tax as computed before the credit is given, which is appropriate to that income;

(b) where the income derived from the Hong Kong Special Administrative Region is dividends paid by a company which is a resident of the Hong Kong Special Administrative Region to a company which is a resident of Korea which owns at least 10 per cent of the voting shares issued by or the capital stock of the company paying the dividends, the credit shall take into account the Hong Kong Special Administrative Region tax payable by the company in respect of the profits out of which such dividend is paid.

Article 22

Non-Discrimination

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

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

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12, or paragraph 4 of Article 20 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Party.

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. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 23

Mutual Agreement Procedure

1. **[The first sentence of paragraph 1 of Article 23 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 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 22, to that of the Contracting Party in which he has the right of abode or is incorporated or otherwise constituted (in the case of the Hong Kong Special Administrative Region) or of which he is a national (in the case of Korea).] 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 23 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 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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

Article 24

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 of the Contracting Parties concerning taxes covered by this Agreement, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Information shall not be disclosed to any third jurisdiction 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 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 the information relates to ownership interests in a person.

Article 25

Fiscal Privileges

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

Article 26

Limitation on Benefits

1. **[REPLACED by paragraph 1 of Article 7 of the MLI]** [In respect of Articles 10, 11, 12, 13, and 20, a resident of a Contracting Party shall not be entitled to benefits otherwise accorded to residents of a Contracting Party by this Agreement, if the main purpose or one of the main purposes of any person concerned with the creation or assignment of any share, debt-claim, property or right in respect of which the income is paid is to take advantage of these Articles by means of that creation or assignment.]

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

2. Nothing in this Article shall be construed as restricting, in any manner, the application of any provisions of the law of a Contracting Party which are designed to prevent the avoidance or evasion of taxes.

Article 27

Entry into Force

1. The Governments of the Contracting Parties shall notify each other that the domestic requirements for the entry into force of this Agreement have been complied with.

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

   (a) in the Hong Kong Special Administrative Region:

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

(b) in Korea:

(i) in respect of taxes withheld at source, for amounts payable on or after the first day of April in the first calendar year following that in which this Agreement enters into force; and

(ii) in respect of other taxes, for any taxable year beginning on or after the first day of January in the first calendar year following that in which this Agreement enters into force.

Article 28

Termination

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

(a) in the Hong Kong Special Administrative Region:

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

(b) in Korea:

(i) in respect of taxes withheld at source, for amounts payable on or after the first day of April in the first calendar year following that in which the notice is given; and

(ii) in respect of other taxes, for the taxable year beginning on or after the first day of January in the first calendar year following that in which the notice is given.

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

DONE in duplicate at HONG KONG this 8th day of JULY 2014, in the Chinese, Korean and English languages, all three texts being equally authentic. In the case of divergence of interpretation, the English text shall prevail.

[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 Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income ("the Agreement"), the two Governments have agreed on the following provisions which shall form an integral part of the Agreement.

General

1. It is understood that the two Contracting Parties shall consult together at regular intervals regarding the terms, operation and application of the Agreement to ensure that it continues to serve the purposes of avoiding double taxation and preventing fiscal evasion and shall, where they consider it appropriate, conclude Protocols to amend the Agreement. The first such consultation shall take place no later than December 31st in the fifth year following the date on which the Agreement enters into force in accordance with the provisions of Article 27 (Entry into force). Further consultations shall take place thereafter at intervals of no more than five years. Notwithstanding, either Contracting Party may at any time request consultations with the other Contracting Party on matters relating to the terms, operation and application of the Agreement which it considers require urgent resolution.

With reference to Article 3

2. 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 Korea relating to the taxes to which the Agreement applies.

With reference to Articles 8 and 27

3. The operation of aircraft in international traffic carried on by an airline of one Contracting Party shall be exempt from value added tax and any similar tax imposed by the other Contracting Party on a reciprocal basis in accordance with the laws and regulations of the latter Contracting Party.

4. It is understood that the Agreement, upon conclusion between the two Contracting Parties, shall replace Article 9 of the Agreement between the Government of Hong Kong and the Government of the Republic of Korea concerning Air Services signed at Seoul on 29 March 1996 (hereinafter referred to as "the Air Services Agreement"). However, the provisions of the said Article 9 of the Air Services Agreement shall continue to have effect for the taxable years or years of assessment which are expired before the time at which the provisions of the Agreement shall be effective.

With reference to Article 18

5. With reference to paragraph 1 of Article 18 of the Agreement, it is understood that the provisions concerning government service cover the remuneration paid to an individual in respect of services rendered to the Bank of Korea, the Korea Export-Import Bank and other institutions performing functions of a governmental nature as may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting Parties.

With reference to Article 24

6. It is understood that, subject to the provisions of Article 24 of the Agreement, the competent authorities of the Contracting Parties shall disclose any information that precedes the date on which the Agreement has effect for the tax for which information is sought, insofar as the information is foreseeably relevant for a taxable period or taxable event following that date.

7. It is understood that the provisions in Article 24 of the Agreement also cover any other taxes as may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting Parties.

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

DONE in duplicate at HONG KONG this 8th day of JULY 2014, in the Chinese, Korean and English languages, all the texts being equally authentic. In the case of divergence of interpretation, the English text shall prevail.

[SIGNED]