SYNTHESISED TEXT
OF THE MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING AND THE AGREEMENT BETWEEN THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE KINGDOM OF THE NETHERLANDS 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 Hong Kong Special Administrative Region of the People's Republic of China and the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 22 March 2010 (the "Agreement"), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the People's Republic of China and the Kingdom of the Netherlands 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 Kingdom of the Netherlands on 29 March 2019. These reservations and notifications are subject to modifications as provided in the MLI. Modifications made to reservations and notifications could modify the effects of the MLI on the Agreement.

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

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

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 Descriptive language has been replaced by legal references of the existing provisions to ease the readability.

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

References

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

The MLI:

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

In the HKSAR:

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

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

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

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

The provisions of the MLI applicable to the Agreement do not take effect on the same dates as the original provisions of the Agreement. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by the People's Republic of China on behalf of the HKSAR and the Kingdom of the Netherlands 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 July 2019 for the Kingdom of the Netherlands

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 Kingdom of the Netherlands:

(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 Kingdom of the Netherlands, for taxes levied with respect to taxable periods beginning on or after 23 September 2023.

AGREEMENT BETWEEN THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE KINGDOM OF THE NETHERLANDS 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 Kingdom of the Netherlands,

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 this Agreement for the indirect benefit of residents of third jurisdictions),

Have agreed as follows:

CHAPTER I
SCOPE OF THE AGREEMENT

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 this Agreement shall apply are in particular:

   (a) in the case of the Netherlands:

   - de inkomstenbelasting (income tax);

   - de loonbelasting (wages tax);

   - de vennootschapsbelasting (company tax) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mijnbouwwet (the Mining Act); and

   - de dividendbelasting (dividend tax);

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

- profits tax;

- salaries tax; and

- property tax;

whether or not charged under personal assessment.

4. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes, as well as any other taxes falling within paragraphs 1 and 2 of this Article which a Contracting Party may impose 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. The existing taxes, together with the taxes imposed after the signature of this Agreement, are hereinafter referred to as "Hong Kong Special Administrative Region tax" and "Netherlands tax" respectively.

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

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

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

(b) the term "the Netherlands" means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial sea, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights;

(c) the term "Hong Kong Special Administrative Region" means the Hong Kong Special Administrative Region of the People's Republic of China;

(d) the term "person" includes an individual, a company, a partnership and any other body of persons and in the case of the Hong Kong Special Administrative Region also a trust;

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

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

(g) 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;

(h) 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;

(i) the term "competent authority" means:

(i) in the case of the Netherlands, the Minister of Finance or his authorised representative;

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

(j) the term "national", in relation to the Netherlands means any individual possessing the nationality of the Netherlands and any legal person, partnership or association deriving its status as such from the laws in force in the Netherlands;

(k) 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 Contracting Party for the purposes of the taxes to which this 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 Netherlands, any person who, under the laws of the Netherlands, is liable to tax therein by reason of his domicile, residence, 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 the Netherlands in respect only of income from sources in the Netherlands;

(b) 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 normally managed or 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 normally managed or controlled in the Hong Kong Special Administrative Region.

2. The term "resident of a Contracting Party" also includes:

(a) for the Netherlands, the Government of the Netherlands, any political subdivision or local authority thereof;

(b) for the Hong Kong Special Administrative Region, the Government of the Hong Kong Special Administrative Region; and

(c) for the Contracting Parties a pension fund or scheme that is recognised and controlled according to the statutory provisions of a Contracting Party and the income of which is generally exempt from tax in that Contracting Party.

3. 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, he shall be deemed to be a resident only of the Contracting Party of which he is a national (in the case of the Netherlands) or in which he has the right of abode (in the case of the Hong Kong Special Administrative Region);

(d) if he is a national of the Netherlands and has also the right of abode in the Hong Kong Special Administrative Region or if he is not a national of the Netherlands nor does he have the right of abode in the Hong Kong Special Administrative Region, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting Parties, the competent authorities of the Contracting Parties shall endeavour to settle the question by mutual agreement. In the absence of such an agreement, such person shall not be entitled to claim any benefits under this Agreement, except that such person may claim the benefits of Articles 23 (Non-discrimination) and 24 (Mutual Agreement Procedure), and the competent authorities may determine by mutual agreement the mode of application of the rest of this Agreement to that person.

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. The term “permanent establishment” also encompasses a building site, a construction, assembly, installation or dredging project, but only if such site or project lasts more than six months.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, where an enterprise of a Contracting Party performs services in the other Contracting Party

(a) through an individual who is present in that other Contracting Party for a period or periods exceeding in the aggregate 183 days in any twelve month period, and more than 50 per cent of the gross revenues attributable to active business activities of the enterprise during this period or periods are derived from the services performed in that other Contracting Party through that individual, or

(b) for a period or periods exceeding in the aggregate 183 days in any twelve month period, and these services are performed for the same project or for connected projects through one or more individuals who are present and performing such services in that other Contracting Party

the activities carried on in that other Contracting Party in performing these services shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other Contracting Party, unless these services are limited to those mentioned in paragraph 5 which, if performed through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph. For the purposes of this paragraph, services performed by an individual on behalf of one enterprise shall not be considered to be performed by another enterprise through that individual unless that other enterprise supervises, directs or controls the manner in which these services are performed by the individual.

5. 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.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 applies - is acting in a Contracting Party on behalf of an enterprise of the other Contracting Party, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting Party in respect of any activities which that person undertakes for the enterprise, if such a person has, and habitually exercises, in that Contracting Party an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 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.

7. 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.

8. 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.

CHAPTER III
TAXATION OF INCOME

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 law of the Contracting Party in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to explore for or work, mineral deposits, quarries, sources and other natural resources; ships 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 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 the 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 or with other enterprises with which it deals.

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. If the information available to the taxation authority of a Contracting Party is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in this Article shall affect the application of any law of that Contracting Party relating to the determination of the tax liability of a person provided that that law shall be applied in accordance with the principles of this Article, so far as the information available to the taxation authority permits.

7. 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.

8. 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 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. 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. It is understood, however, that the fact that associated enterprises have concluded arrangements, such as cost sharing arrangements or general services agreements, for or based on the allocation of executive, general administrative, technical and commercial expenses, research and development expenses and other similar expenses, is not in itself a condition as meant in the preceding sentence.

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 Contracting Party and 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 profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose the competent authorities of the Contracting Parties shall if necessary consult each other.

Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting Party to a resident of the other Contracting Party may be taxed in that other 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 10 per cent of the gross amount of the dividends.

3. Notwithstanding the provisions of paragraph 2, the Contracting Party of which the company paying the dividends is a resident shall not levy a tax on dividends paid by that company, if the beneficial owner of the dividends is:

   (a) a company, other than a partnership, which is a resident of the other Contracting Party and holds directly at least 10 per cent of the capital of the company paying the dividends, provided that:

      (i) the shares of the company receiving the dividends are regularly traded on a recognised stock exchange;

(ii) at least 50 per cent of the shares of the company receiving the dividends is owned by a company the shares of which are regularly traded on a recognised stock exchange, but only if the last mentioned company:

(A) is a resident of either Contracting Party; or

(B) is a resident of a member State of the European Union (EU) and that company would be entitled to similar or more favourable benefits as provided by this Article pursuant to a comprehensive arrangement for the avoidance of double taxation between its State of residence and the Contracting Party from which the benefits of this Article are claimed or pursuant to a multilateral agreement to which its State of residence and the Contracting Party from which the benefits of this Article are claimed are a party;

(iii) the company is a bank or insurance company that is established and regulated as such under the laws of the Contracting Party of which it is a resident; or

(iv) the company is a headquarters company for a multinational corporate group which provides a substantial portion of the overall supervision and administration of the group and which has, and exercises, independent discretionary authority to carry out these functions;

(b) a Contracting Party, or a political subdivision or local authority thereof;

(c) an institution created by the Government of a Contracting Party, or a political subdivision or local authority thereof, which is recognised as an integral part of that Government as shall be agreed by mutual agreement of the competent authorities of the Contracting Parties;

(d) a pension fund or scheme as referred to in paragraph 2 of Article 4; or

(e) a company which does not qualify under the conditions mentioned under (i), (ii), (iii) or (iv) of subparagraph (a) or a company other than a company mentioned under subparagraph (c), provided that the competent authority of the Contracting Party which has to grant the benefits determines that the establishment, acquisition or maintenance of the company does not have as its main purpose or one of its main purposes to secure the benefits of this Article.

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

5. The provisions of paragraphs 2 and 3 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

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

7. The provisions of paragraphs 1, 2, 3 and 9 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.

8. 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.

9. Notwithstanding the provisions of paragraphs 1, 2 and 8, dividends paid by a company whose capital is divided into shares and which under the laws of a Contracting Party is a resident of that Contracting Party, to an individual who is a resident of the other Contracting Party may be taxed in the first-mentioned Contracting Party in accordance with the laws of that Contracting Party, if that individual - either alone or with his or her spouse - or one of their relations by blood or marriage in the direct line directly or indirectly holds at least 5 per cent of the issued capital of a particular class of shares in that company.

Article 11

INTEREST

1. Interest arising in a Contracting Party and beneficially owned by a resident of the other Contracting Party shall be taxable only in that other Contracting Party.

2. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of paragraph 1.

3. 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.

4. The provisions of paragraph 1 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.

5. 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 exceeds, for whatever reasons, 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 or deemed to be 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 3 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 the use of, or the right to use, industrial, commercial or scientific equipment 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. 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 exceeds, for whatever reasons, 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.

6. 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.

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 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 Contracting 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 Contracting Party.

4. Gains derived by a resident of a Contracting Party from the alienation of shares in 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 Contracting Party provided that the resident owns, directly or indirectly, a minimum of 5 per cent of the issued shares. However, this paragraph does not apply to gains derived from the alienation of shares:

   (a) quoted on a recognised stock exchange; or

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

   (c) in a company deriving more than 50 per cent of its asset value directly or indirectly from immovable property in which it carries on its business.

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

6. Notwithstanding the provisions of paragraph 5, a Contracting Party may, in accordance with its own laws, including the interpretation of the term "alienation", levy tax on gains derived by an individual who is a resident of the other Contracting Party from the alienation of shares in, "jouissance" rights or debt-claims on a company whose capital is divided into shares and which, under the laws of the first-mentioned Contracting Party, is a resident of that Contracting Party, and from the alienation of part of the rights attached to the said shares, "jouissance" rights or debt-claims, if that individual - either alone or with his or her spouse - or one of their relations by blood or marriage in the direct line directly or indirectly holds at least 5 per cent of the issued capital of a particular class of shares in that company.

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 the 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 fiscal year concerned, and

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

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

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

Article 15

DIRECTORS' FEES

Directors' fees and other similar remuneration 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

ENTERTAINERS AND SPORTSPERSONS

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 sportsperson, 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 sportsperson in his capacity as such accrues not to the entertainer or sportsperson 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 sportsperson are exercised.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to remuneration derived from activities performed in a Contracting Party by an entertainer or a sportsperson from the other Contracting Party, if the visit to the first-mentioned Contracting Party is substantially supported by public funds of the other Contracting Party including its local authority or statutory body. In such a case the remuneration shall be taxable only in the Contracting Party of which the entertainer or sportsperson is a resident.

Article 17

PENSIONS, ANNUITIES, SOCIAL SECURITY PAYMENTS, ALIMONY AND MAINTENANCE PAYMENTS

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration (including a lump sum payment) in consideration of past employment or self-employment, and annuities (including a lump sum payment), arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in the first-mentioned Contracting Party.

2. Pensions and other payments paid out under the social security legislation of a Contracting Party to a resident of the other Contracting Party may be taxed in the first-mentioned Contracting Party.

3. Pensions and other similar remuneration (including a lump sum payment) and annuities (including a lump sum payment) shall be deemed to arise in a Contracting Party:

   (a) in the case of the Netherlands, insofar as the contributions or payments associated with the pensions, other similar remuneration or annuities, or the entitlements received from them qualified for relief from tax in the Netherlands;

   (b) in the case of the Hong Kong Special Administrative Region, if paid out of a pension scheme where such pension scheme is recognised for tax purposes or regulated in accordance with the laws of the Hong Kong Special Administrative Region.

   The transfer of a pension or other similar remuneration, or an annuity from a pension fund or an insurance company in a Contracting Party to a pension fund or an insurance company in any place outside that Contracting Party shall not restrict in any way the taxing rights of the first-mentioned Contracting Party under this Article.

4. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

5. For the purposes of this Article in the case of the Hong Kong Special Administrative Region,

   (a) a pension scheme means an arrangement in which individuals may participate in order to secure retirement benefits, and

   (b) a pension scheme is recognised for tax purposes if contributions to the scheme qualify for tax relief.

6. Periodic payments, made pursuant to a written separation agreement or a decree of divorce, separation maintenance, or compulsory support, including payments for the support of a child, as well as lump sum payments in lieu thereof, paid by a resident of a Contracting Party to a resident of the other Contracting Party, shall not be taxable in either Contracting Party if the payer is not entitled in the first-mentioned Contracting Party to deduction from tax for any such payments. However, if the payer is entitled in the first-mentioned Contracting Party to deduction from tax for any such payments, such payments may be taxed in either Contracting Party.

Article 18

GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration, other than a pension, 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 Contracting Party or subdivision or authority shall be taxable only in that Contracting 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 Contracting Party and the individual is a resident of that Contracting Party who:

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

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

2. (a) Any pension (including a lump sum payment) paid by, or out of funds contributed to or created 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 Contracting Party or subdivision or authority shall be taxable only in that Contracting Party.

(b) However, such pension (including a lump sum payment) shall be taxable only in the other Contracting Party to the extent that the services were rendered in that Contracting Party under the circumstances as described under subparagraph (b) of paragraph 1.

3. The provisions of the preceding paragraphs of this Article shall not apply to salaries, wages and other similar remuneration, or to pensions (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. In that case, the provisions of Articles 14, 15, 16 and 17, as the case may be, shall apply.

Article 19

STUDENTS

Remuneration and 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 that Contracting Party, provided that such remuneration and payments arise from sources outside that Contracting Party.

Article 20

OTHER INCOME

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

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

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income not dealt with in the foregoing Articles of this Agreement derived by a resident of a Contracting Party from sources in the other Contracting Party may also be taxed in that other Contracting Party.

CHAPTER IV
ELIMINATION OF DOUBLE TAXATION

Article 21
METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income which, according to the provisions of this Agreement, may be taxed or shall be taxable only in the Hong Kong Special Administrative Region.

2. However, where a resident of the Netherlands derives items of income which according to paragraphs 1, 3 and 4 of Article 6, paragraph 1 of Article 7, paragraph 7 of Article 10, paragraph 4 of Article 11, paragraph 4 of Article 12, paragraphs 1 and 2 of Article 13, paragraphs 1 and 3 of Article 14, paragraphs 1 (subparagraph (a)) and 2 (subparagraph (a)) of Article 18 and paragraph 2 of Article 20 of this Agreement may be taxed or shall be taxable only in the Hong Kong Special Administrative Region and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of the Netherlands law for the avoidance of double taxation. For that purpose the said items of income shall be deemed to be included

in the amount of the items of income which are exempt from Netherlands tax under those provisions.

3. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income which according to paragraphs 2 and 9 of Article 10, paragraph 2 of Article 12, paragraphs 4 and 6 of Article 13, Article 15, paragraphs 1 and 2 of Article 16, paragraphs 1, 2 and 6 of Article 17 and paragraph 3 of Article 20 of this Agreement may be taxed in the Hong Kong Special Administrative Region to the extent that these items are included in the basis referred to in paragraph 1. The amount of this deduction shall be equal to the tax paid in the Hong Kong Special Administrative Region on these items of income, but shall, in case the provisions of the Netherlands law for the avoidance of double taxation provide so, not exceed the amount of the deduction which would be allowed if the items of income so included were the sole items of income which are exempt from Netherlands tax under the provisions of the Netherlands law for the avoidance of double taxation.

This paragraph shall not restrict allowance now or hereafter accorded by the provisions of the Netherlands law for the avoidance of double taxation, but only as far as the calculation of the amount of the deduction of Netherlands tax is concerned with respect to the aggregation of income from more than one country and the carry forward of the tax paid in the Hong Kong Special Administrative Region on the said items of income to subsequent years.

4. Notwithstanding the provisions of paragraph 2, the Netherlands shall allow a deduction from the Netherlands tax or the tax paid in the Hong Kong Special Administrative Region on items of income which according to paragraph 1 of Article 7, paragraph 7 of Article 10, paragraph 4 of Article 11, paragraph 4 of Article 12 and paragraph 2 of Article 20 of this Agreement may be taxed in the Hong Kong Special Administrative Region to the extent that these items are included in the basis referred to in paragraph 1, insofar as the Netherlands under the provisions of the Netherlands law for the avoidance of double taxation allows a deduction from the Netherlands tax of the tax levied in another country on such items of income. For the computation of this deduction the provisions of paragraph 3 of this Article shall apply accordingly.

5. In the Hong Kong Special Administrative Region, subject to the provisions of the laws of the Hong Kong Special Administrative Region relating to the allowance of a credit against Hong Kong Special Administrative Region tax of tax paid in a jurisdiction outside the Hong Kong Special Administrative Region (which shall not affect the general principle of this Article), Netherlands tax paid under the laws of the Netherlands 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 the Netherlands, 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.

CHAPTER V
SPECIAL PROVISIONS

Article 22
OFFSHORE ACTIVITIES

1. The provisions of this Article shall apply notwithstanding any other provisions of this Agreement. However, this Article shall not apply where offshore activities of a person constitute for that person a permanent establishment under the provisions of Article 5.

2. In this Article the term "offshore activities" means activities which are carried on offshore in connection with the exploration or exploitation of the seabed and its subsoil and their natural resources, situated in a Contracting Party.

3. An enterprise of a Contracting Party which carries on offshore activities in the other Contracting Party shall, subject to paragraph 4 of this Article, be deemed to carry on, in respect of those activities, business in that other Contracting Party through a permanent establishment situated therein, unless the offshore activities in question are carried on in the

other Contracting Party for a period or periods of less than in the aggregate 30 days in any twelve month period.

For the purposes of this paragraph:

(a) where an enterprise carrying on offshore activities in the other Contracting Party is associated with another enterprise and that other enterprise continues, as part of the same project, the same offshore activities that are or were being carried on by the first-mentioned enterprise, and the aforementioned activities carried on by both enterprises - when added together - constitute a period of at least 30 days, then each enterprise shall be deemed to carry on its activities for a period of at least 30 days in any twelve month period;

(b) an enterprise shall be regarded as associated with another enterprise if one enterprise holds directly or indirectly at least one third of the capital of the other enterprise or if a person holds directly or indirectly at least one third of the capital of both enterprises.

4. However, for the purposes of paragraph 3 of this Article the term "offshore activities" shall be deemed not to include:

(a) one or any combination of the activities mentioned in paragraph 5 of Article 5;

(b) towing or anchor handling by ships primarily designed for that purpose and any other activities performed by such ships;

(c) the transport of supplies or personnel by ships or aircraft in international traffic.

5. Notwithstanding the second sentence of paragraph 1 of this Article, salaries, wages and other similar remuneration derived by a resident of a Contracting Party in respect of an employment connected with offshore activities carried on through a permanent establishment in the other Contracting Party may, to the extent that the employment is exercised offshore in that other Contracting Party, be taxed in that other Contracting Party.

6. Where documentary evidence is produced that tax has been paid in the Hong Kong Special Administrative Region on the items of income which may be taxed or shall be taxable only in the Hong Kong Special Administrative Region according to Article 7 and Article 14 in connection with paragraph 3 of this Article and according to paragraph 5 of this Article, the Netherlands shall allow a reduction of its tax, which shall be computed in conformity with the rules laid down in paragraph 2 of Article 21.

Article 23

NON-DISCRIMINATION

1. Persons who, in the case of the Netherlands, are nationals, and, in the case of the Hong Kong Special Administrative Region, have the right of abode or are incorporated or otherwise constituted therein, 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 Contracting Party (where that other Contracting Party is the Hong Kong Special Administrative Region) or nationals of that other Contracting Party (where that other Contracting Party is the Netherlands) 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. 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 nationals of the Contracting Party (where the Contracting Party is the Netherlands) or persons who have the right of abode in the Contracting Party (where the Contracting Party is the Hong Kong Special Administrative Region) in the same circumstances, in particular with respect to residence, 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. 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.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 5 of Article 11, or paragraph 5 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, 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.

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 Contracting Party of which he is a national (in the case of the Netherlands) or in which he has the right of abode or is incorporated or otherwise constituted (in the case of the Hong Kong

Special Administrative Region).] The case must be presented within 3 years from the first notification of the action resulting in taxation not in accordance with the provisions of this 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 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.

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 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 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, or the oversight of the above. 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 without the consent of the Contracting Party originally furnishing the information.

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

MEMBERS OF GOVERNMENT MISSIONS

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

The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Agreement:

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

Notwithstanding any provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.

Article 27

MISCELLANEOUS RULES

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

2. For the purposes of this Article, “laws and measures concerning tax avoidance” includes laws and measures for preventing, discouraging, avoiding or counteracting the effect of any transaction, arrangement or practice which has the purpose or effect of conferring a tax benefit on any person.

3. For the purposes of this Article, "laws and measures concerning tax avoidance" includes for the Netherlands in any case:

Article 17, paragraph 3, subparagraph b, in connection with article 17a, paragraph 1, subparagraph c, of the Corporate Income Tax Act 1969, or any identical or substantially similar provisions replacing these Articles.

Article 28

TERRITORIAL EXTENSION

1. This Agreement may be extended, either in its entirety or with any necessary modifications, to either or both of the countries of the Netherlands Antilles and Aruba or the legal successor of either or both of these countries, if the country concerned imposes taxes substantially similar in character to those to which the Agreement applies. Any such extension shall take effect from such date and shall be subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged in writing.

2. Unless otherwise agreed the termination of the Agreement shall not also terminate any extension of the Agreement to any country to which it has been extended under this Article.

CHAPTER VI

FINAL PROVISIONS

Article 29

ENTRY INTO FORCE

1. This Agreement shall enter into force on the fifth day after the latter of the dates on which the respective Contracting Parties have notified each other in writing that the formalities required by its law for the bringing into force of this Agreement have been complied with.

2. The provisions of this Agreement shall have effect:

(a) in the Hong Kong Special Administrative Region, in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1 April 2011;

(b) in the Netherlands, in respect of Netherlands tax, for any taxable years and periods beginning on or after 1 January 2011.

Article 30

TERMINATION

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate this Agreement by giving the other Contracting Party written notice of termination at least 6 months before the end of any calendar year after the expiration of a period of five years from the date of its entry into force. In such event, this Agreement shall cease to have effect:

(a) in the Hong Kong Special Administrative Region, in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1 April in the calendar year next following that in which the notice is given;

(b) in the Netherlands, in respect of Netherlands tax, for any taxable years and periods beginning on or after 1 January in the calendar year next following that in which the notice is given.

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

DONE in duplicate at Hong Kong this 22nd day of March 2010, in the English language.

[SIGNED]

PROTOCOL TO THE AGREEMENT BETWEEN THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

At the time of signing the Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (the "Agreement"), the Governments of the Contracting Parties have agreed upon the following provisions which shall form an integral part of this Agreement.

I. General

1. It is understood that the OECD Commentary is an important guideline when interpreting the provisions of this Agreement that are the same or substantially the same as the corresponding provisions of the OECD Model Convention on income and on capital at the time of signing as well as subsequent clarifying modifications of the OECD Commentary on these provisions. The understanding in the preceding sentence shall not apply with respect to any contrary interpretation agreed to in this Protocol, to contrary interpretation agreed to by the competent authorities after the entry into force of the Agreement or to reservations or observations to the OECD Model Tax Convention or OECD Commentary by either Contracting Party.

2. For the purposes of applying this Agreement an item of income, profit or gain derived through a person that is fiscally transparent under the laws of either Contracting Party, shall be considered to be derived by a resident of a Contracting Party to the extent that the item is treated for the purposes of the taxation law of such Contracting Party as the income, profit or gain of that resident.

II. Ad Article 2

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

III. Ad Article 4

1. An individual living aboard a ship without any real domicile in either of the Contracting Parties shall be deemed to be a resident of the Contracting Party in which the ship has its home harbour.

2. In considering cases which fall within paragraph 4 of Article 4 of the Agreement the competent authorities shall have regard to:

   (a) where the senior management of the person is carried on;

   (b) where the meetings of the board of directors or equivalent body are held;

   (c) where the person's headquarters are located;

   (d) the extent and nature of the economic nexus of the person to each Contracting Party;

   (e) whether determining that the person is a resident of one of the Contracting Parties but not of the other Contracting Party for the purposes of the Agreement would carry the risk of an improper use of the Agreement or inappropriate application of the domestic law of either Contracting Party.

IV. Ad Articles 5, 6, 7, 13 and 22

It is understood that rights to the exploration and exploitation of natural resources shall be regarded as a permanent establishment in the Contracting Party to whose seabed and subsoil thereof these rights apply. Furthermore, it is understood that the aforementioned rights include interests in such rights.

V. Ad Article 7

1. In respect of paragraphs 1 and 2 of Article 7:

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

   (b) specifically, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits attributable to such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract that is effectively carried out by the permanent establishment in the Contracting Party in which the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the Contracting Party of which the enterprise is a resident.

2. Payments received as a consideration for technical services, including studies or surveys of a scientific, geological or technical nature, or for consultancy or supervisory services shall be deemed to be payments to which the provisions of Article 7 apply.

VI. Ad Articles 8 and 29

1. The Agreement between the Kingdom of the Netherlands and the Hong Kong Special Administrative Region of the People's Republic of China for the Avoidance of Double Taxation on Income, Profits, Gains or Capital of an Enterprise Operating Ships in International Traffic signed at Hong Kong on 2 November 2000 (hereinafter referred to as 'the Shipping Agreement') shall terminate upon the entry into force of this Agreement. However, the provisions of the Shipping Agreement shall continue to have effect for taxable years and periods which are expired before the time at which the provisions of this Agreement shall be effective.

2. It is understood that Article 8A of the Agreement between the Government of the Kingdom of the Netherlands and the Government of Hong Kong concerning air services signed at The Hague on 17 September 1986 (hereinafter referred to as 'the Air Services Agreement') shall not have effect as long as this Agreement is in force. However, the provisions of the Air Services Agreement shall continue to have effect for taxable years and periods which are expired before the time at which the provisions of this Agreement shall be effective.

VII. Ad Articles 10 and 13

1. A person shall be considered a headquarters company for the purposes of paragraph 3, subparagraph (a) (iv) of Article 10 only if:

   (a) the corporate group consists of corporations resident in, and engaged in an active business in, at least five countries and the business activities carried on in each of the five countries generate at least 10 per cent of the gross income of the group; and

   (b) no more than 50 per cent of its gross income is derived from the Contracting Party of which the company paying the dividend is a resident.

2. The determination for the purposes of paragraph 3, subparagraph (e) of Article 10 shall be based on all facts and circumstances including:

(a) the nature and volume of the activities of the company in its country of residence in relation to the nature and volume of the dividends;

(b) both the historical and the current ownership of the company; and

(c) the business reasons for the company residing in its country of residence.

The competent authority which has to grant the benefit will consult with the competent authority of the other Contracting Party before denying the benefit.

3. For the purposes of paragraph 3 of Article 10 and paragraph 4 of Article 13 the term "recognised stock exchange" means:

(a) any of the stock exchanges in the member states of the European Union (EU);

(b) The Stock Exchange of Hong Kong Limited;

(c) any other stock exchange agreed upon by the competent authorities of the Contracting Parties,

provided that the purchase or sale of shares on the stock exchange is not implicitly or explicitly restricted to a limited group of investors.

4. For the purposes of Article 10, paragraph 3, subparagraph (c), in the case of the Hong Kong Special Administrative Region, institution means in any case:

(a) the Hong Kong Monetary Authority;

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

VIII. Ad Articles 10, 11 and 12

Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Articles 10, 11 or 12, applications for the refund of the excess amount of tax have to be lodged with the competent authority of the Contracting Party having levied the tax, within a period of three years after the expiration of the calendar year in which the tax has been levied.

IX. Ad Articles 10 and 13

It is understood that income received in connection with the (partial) liquidation of a company or a purchase of own shares by a company is treated as income from shares and not as capital gains.

X. Ad Article 15

It is understood that where a company is a resident of the Netherlands, the term "member of the board of directors" includes both a "bestuurder" and a "commissaris". It is understood that "bestuurder" or "commissaris" of a Netherlands company means persons who are nominated as such by the general meeting of shareholders or by any other competent body of such company and are charged with the general management of the company and the supervision thereof, respectively.

XI. Ad Article 25

It is understood that Article 25 does not require the Contracting Parties to exchange information on an automatic or spontaneous basis.

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

DONE in duplicate at Hong Kong this 22nd day of March 2010, in the English language.

[SIGNED]