# SYNTHESISED TEXT OF THE MLI AND THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA AND THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

## General disclaimer on the Synthesised text document

This document presents the synthesised text for the application of the Agreement between the Government of the Republic of Austria and the Government of the Hong Kong Special Administrative Region of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital signed on 25 May 2010 and amended by the protocol signed on 25 June 2012 (the "Agreement"), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the Republic of Austria and by the People's Republic of China on 7 June 2017 (the "MLI").

This document was prepared jointly by the competent authorities of the Republic of Austria and the Hong Kong Special Administrative Region of the People's Republic of China (the "HKSAR") and represents their shared understanding of the modifications made to the Agreement by the MLI.

The document was prepared on the basis of the MLI position of the Republic of Austria submitted to the Depositary upon ratification on 22 September 2017, of the MLI position submitted by the People's Republic of China on behalf of the HKSAR to the Depositary upon approval on 25 May 2022 and of the notification made by the People's Republic of China on behalf of the HKSAR to the Depositary pursuant to Article 35(7)(b) of the MLI on 21 February 2023. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on this Agreement.

The authentic legal texts of the Agreement and the MLI take precedence and remain the 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 OECD Model Tax Convention.

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 "Covered Tax Agreement" and "Agreement", "Contracting Jurisdictions" and "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 authentic legal texts of the MLI and the Agreement can be found on the webpage of the Federal Ministry of Finance (https://www.bmf.gv.at/).

The MLI position of the Republic of Austria submitted to the Depositary upon ratification on 22 September 2017, the MLI position submitted by the People's Republic of China on behalf of the HKSAR to the Depositary upon approval on 25 May 2022 and the notification made by the People's Republic of China on behalf of the HKSAR to the Depositary pursuant to Article 35(7)(b) of the MLI on 21 February 2023 can be found on the MLI Depositary (OECD) webpage (http://www.oecd.org/tax/treaties/beps-mli-signatories-and-parties.pdf).

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

Entry into Effect of the MLI Provisions

The provisions of the MLI applicable to this 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 Republic of Austria and the People's Republic of China on behalf of the HKSAR in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: 22 September 2017 for the Republic of Austria and 25 May 2022 for the People's Republic of China (including the HKSAR).

Entry into force of the MLI: 1 July 2018 for the Republic of Austria and 1 September 2022 for the People's Republic of China (including the HKSAR).

Date of receipt by the Depository 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.

This document provides specific information on the dates on or after which each of the provisions of the MLI has effect with respect to the Agreement throughout this document.

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

The Government of the Republic of Austria and the Government of the Hong Kong Special Administrative Region of the People's Republic of China;

**[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 and on capital;]

*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:*[1]

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),

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[1] In accordance with paragraphs 1, 3 and 7 of Article 35 of the MLI, paragraph 1 of Article 6 of the MLI has effect in the Republic of Austria with respect to this Agreement:

a) 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, which corresponds to the first day of the next calendar year that begins on or after 30 days after the date of receipt by the Depositary of the notification made by the People's Republic of China on behalf of the HKSAR that the HKSAR has completed its internal procedures for the entry into effect of the provisions of the MLI with respect to this Agreement; and

b) with respect to all other taxes levied by the Republic of Austria, for taxes levied with respect to taxable periods beginning on or after 1 January 2024, which corresponds to the first day of the next calendar year that begins on or after the expiration of a period of six calendar months from 30 days after the date of receipt by the Depositary of the notification made by the People's Republic of China on behalf of the HKSAR that the HKSAR has completed its internal procedures for the entry into effect of the provisions of the MLI with respect to this Agreement;

and

In accordance with paragraphs 1, 2 and 7 of Article 35 of the MLI, paragraph 1 of Article 6 of the MLI has effect in the HKSAR with respect to this Agreement:

a) 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, which corresponds to the first day of the next taxable period that begins on or after 30 days after the date of receipt by the Depositary of the notification made by the People's Republic of China on behalf of the HKSAR that the HKSAR has completed its internal procedures for the entry into effect of the provisions of the MLI with respect to this Agreement; and

b) 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, which corresponds to taxable periods beginning on or after the expiration of a period of six calendar months from 30 days after the date of receipt by the Depositary of the notification made by the People's Republic of China on behalf of the HKSAR that the HKSAR has completed its internal procedures for the entry into effect of the provisions of the MLI with respect to this Agreement.

Have agreed as follows:

## Article 1
## Persons Covered

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

## Article 2
## Taxes Covered

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting Party or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

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

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

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

      (i) profits tax;

      (ii) salaries tax; and

      (iii) property tax,

      whether or not charged under personal assessment;

   (b) in the case of Austria:

(i) the income tax (die Einkommensteuer);

(ii) the corporation tax (die Körperschaftsteuer);

(iii) the land tax (die Grundsteuer);

(iv) the tax on agricultural and forestry enterprises (die Abgabe von land- und forstwirtschaftlichen Betrieben); and

(v) the tax on the value of vacant plots (die Abgabe vom Bodenwert bei unbebauten Grundstücken).

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" or "Austrian tax", as the context requires.

## Article 3
## General Definitions

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

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

(ii) the term "Austria" means the Republic of Austria;

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

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

(d) 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 Austria, the Federal Minister of Finance or his authorized representative;

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

(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 "national", in relation to Austria, means:

(i) any individual possessing the nationality or citizenship of Austria; and

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

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

(k) the term "tax" means Hong Kong Special Administrative Region tax or Austrian tax, as the context requires.

2. In this Agreement, the terms "Hong Kong Special Administrative Region tax" and "Austrian tax" do not include any penalty or interest imposed under the laws in force in either Contracting Party relating to the taxes to which the Agreement applies by virtue of Article 2.

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

## Article 4
## Resident

1. For the purposes of this Agreement, the term "resident of a 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 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;

(b) in the case of Austria, any person who, under the laws of Austria, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes Austria and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in Austria in respect only of income from sources in Austria or capital situated therein;

(c) in the case of either Contracting Party, the Government of that Party.

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

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

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

(c) if he has an habitual abode in both Parties or in neither of them, he shall be deemed to be a resident only of the 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 Austria);

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

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

## Article 5
## Permanent Establishment

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

2. The term "permanent establishment" includes especially:

   (a) a place of management;

   (b) a branch;

   (c) an office;

   (d) a factory;

   (e) a workshop; 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) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;

   (b) the furnishing of services, including consultancy services, by an enterprise directly or through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting Party for a period or periods aggregating more than 183 days within any twelve-month period.

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

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

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

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

## Article 7
## Business Profits

1. The profits of an enterprise of a Contracting Party shall be taxable only in that 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 an apportionment or other method; such an apportionment or other 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 of an enterprise of a Contracting Party from the operation of ships or aircraft in international traffic 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.

3. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include in particular:

   (a) revenues and gross receipts from the operation of ships or aircraft for the transport of persons, livestock, goods, mail or merchandise in international traffic including:

      (i) income derived from the lease of ships or aircraft on a bareboat charter basis where such lease is incidental to the operation of ships or aircraft in international traffic;

      (ii) income derived from the sale of tickets and the provision of services connected with such transport whether for the enterprise itself or for any other enterprise, provided that in the case of provision of services, such provision is incidental to the operation of ships and aircraft in international traffic;

   (b) interest on funds directly connected with the operation of ships or aircraft in international traffic;

   (c) profits from the lease of containers by the enterprise, when such lease is incidental to the operation of ships or aircraft in international traffic.

## Article 9
## Associated Enterprises

1. Where:

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

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

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

2. Where a Contracting Party includes in the profits of an enterprise of that Party - and taxes accordingly - profits on which an enterprise of the other Contracting Party has been charged to tax in that other Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party shall make an appropriate adjustment to the amount of the tax charged therein on those profits. 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. (a) However, such dividends may also be taxed in the Contracting Party of which the company paying the dividends is a resident and according to the

laws of that Party, but if the beneficial owner of the dividends is a resident of the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

(b) If the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends, such dividends shall be taxable only in the Contracting Party of which the beneficial owner of the dividends is a resident.

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

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a 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 shall be taxable only in that other Party if such resident is the beneficial owner of the interest.

2. 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.

3. 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.

4. 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 he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Party in which the permanent establishment is situated.

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 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 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 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 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 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 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 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. However, this paragraph does not apply to gains derived from the alienation of shares:

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

## Article 14
## Income from Employment

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

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

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

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

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

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 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.

## Article 17
## Pensions

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration (including a lump sum payment) paid to a resident of a Contracting Party in consideration of past employment or self-employment shall be taxable only in that Party.

2. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration (including a lump sum payment) made under a pension or retirement scheme which is:

   (a) a public scheme which is part of the social security system of a Contracting Party; or

   (b) a scheme in which individuals may participate to secure retirement benefits and which is recognised for tax purposes in a Contracting Party,

   shall be taxable only in that Contracting Party.

## Article 18
## Government Service

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting Party or 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 Austria, is a national thereof; or

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

2. Any pension (including a lump sum payment) paid by, or paid out of funds created or contributed by, a Contracting Party or 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.

3. The provisions of paragraph 1 of this Article shall also apply to remuneration derived by members of permanent delegations of foreign trade and commerce of a Contracting Party in the other Contracting Party.

4. The provisions of Articles 14, 15, 16, and 17 shall apply to salaries, wages and other similar remuneration, and to pensions (including a lump sum payment) in respect of services rendered in connection with a business carried on by a Contracting Party or 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 or training receives for the purpose of his maintenance, education or training 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.

## Article 21
## Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting Party and situated in the other Contracting Party, may be taxed in that other Party.

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

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

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

## Article 22
## Methods for Elimination of Double Taxation

Double taxation shall be eliminated as follows:

1. in the case of the Hong Kong Special Administrative Region:

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

   (a) where a resident of Austria derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in the Hong Kong Special Administrative Region and are subject to tax therein, Austria shall, subject to the provisions of subparagraphs (b) to (e), exempt such income or capital from tax;

   (b) where a resident of Austria derives items of income which, in accordance with the provisions of Articles 10, 12 and paragraph 4 of Article 13, may be taxed in the Hong Kong Special Administrative Region, Austria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in the Hong Kong Special Administrative Region. Such deduction shall not, however, exceed that part of the tax, as

computed before the deduction is given, which is attributable to such items of income derived from the Hong Kong Special Administrative Region;

(c) dividends in the sense of subparagraph (b) of paragraph 2 of Article 10 paid by a company which is a resident of the Hong Kong Special Administrative Region to a company which is a resident of Austria shall be exempt from tax in Austria, subject to the relevant provisions of the domestic law of Austria but irrespective of any deviating minimum holding requirements provided for by that law;

(d) where in accordance with any provision of the Agreement income derived or capital owned by a resident of Austria is exempt from tax in Austria, Austria may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital;

(e) the provisions of subparagraph (a) shall not apply to income derived or capital owned by a resident of Austria where the Hong Kong Special Administrative Region applies the provisions of this Agreement to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10 or 12 to such income.

## Article 23
## 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 Austria, are 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 Austria) in the same circumstances, in particular with respect to residence, are or may be subjected.

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

therewith, which is other or more burdensome than the taxation and connected requirements to which persons who have the right of abode in the Party (where the Party is the Hong Kong Special Administrative Region) or nationals of the Party (where the Party is Austria) 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 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.

4. Except where the provisions of paragraph l of Article 9, paragraph 5 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, 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. Similarly, any debts of an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned 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 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.

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

## Article 24
## Mutual Agreement Procedure

1. 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 23, 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 Austria). 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.

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 this 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 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 Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

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

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

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

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

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

## Article 26

## Members of Government Missions

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

*The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Agreement:*[2]

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 or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.

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[2] In accordance with paragraphs 1, 3 and 7 of Article 35 of the MLI, paragraph 1 of Article 7 of the MLI has effect in the Republic of Austria with respect to this Agreement:

a) 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, which corresponds to the first day of the next calendar year that begins on or after 30 days after the date of receipt by the Depositary of the notification made by the People's Republic of China on behalf of the HKSAR that the HKSAR has completed its internal procedures for the entry into effect of the provisions of the MLI with respect to this Agreement; and

b) with respect to all other taxes levied by the Republic of Austria, for taxes levied with respect to taxable periods beginning on or after 1 January 2024, which corresponds to the first day of the next calendar year that begins on or after the expiration of a period of six calendar months from 30 days after the date of receipt by the Depositary of the notification made by the People's Republic of China on behalf of the HKSAR that the HKSAR has completed its internal procedures for the entry into effect of the provisions of the MLI with respect to this Agreement;

and

In accordance with paragraphs 1, 2 and 7 of Article 35 of the MLI, paragraph 1 of Article 7 of the MLI has effect in the HKSAR with respect to this Agreement:

a) 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, which corresponds to the first day of the next taxable period that begins on or after 30 days after the date of receipt by the Depositary of the notification made by the People's Republic of China on behalf of the HKSAR that the HKSAR has completed its internal procedures for the entry into effect of the provisions of the MLI with respect to this Agreement; and

b) 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, which corresponds to taxable periods beginning on or after the expiration of a period of six calendar months from 30 days after the date of receipt by the Depositary of the notification made by the People's Republic of China on behalf of the HKSAR that the HKSAR has completed its internal procedures for the entry into effect of the provisions of the MLI with respect to this Agreement.

## Article 27
## Entry into Force

1. Each of the Contracting Parties shall notify the other in writing of the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the first day of the month next following the date of the later of these notifications.

2. The provisions of this Agreement shall thereupon 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 this Agreement enters into force;

   (b) in Austria:

   in respect of Austrian tax, for any fiscal year beginning on or after 1 January in the calendar year next 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 this Agreement by giving the other Contracting Party written notice of termination at least six months before the end of any calendar year after the fifth year from the date of entry into force of the Agreement. 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 Austria:

in respect of Austrian tax, for any fiscal year beginning on or after 1 January in the calendar year next following that in which the notice is given.

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

DONE in duplicate at Hongkong, this 25th day of May, 2010, in the English language.

| For the Government of the Republic of Austria: | For the Government of the Hong Kong Special Administrative Region of the People's Republic of China: |
| --- | --- |
| Andreas Schieder | K.C. Chan |

# PROTOCOL

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

I. With reference to Article 3

1. For the purposes of paragraph 1 (j) of Article 3, the term "person" includes a trust and a partnership.

2. For the purposes of paragraph 2 of Article 3, the term "penalty or interest", in the case of the Hong Kong Special Administrative Region, includes, without limitation, any sum added to Hong Kong Special Administrative Region tax by reason of default and recovered therewith, and additional tax assessed for infringement of or failure to comply with its tax laws.

II. With reference to Article 22

For the purposes of Article 22, Austria may, by virtue of a decree based on section 48 of the Austrian Federal Tax Proceedings Code (Bundesabgabenordnung), apply the credit method for the avoidance of double taxation in specified cases, due regard being had to the principles as laid down in Article 23B of the Organisation for Economic Co-operation and Development Model Tax Convention on Income and on Capital ("OECD Model Tax Convention"), if reciprocal application of the credit method should be in the public interest of Austria. It is agreed that such switch-over to the credit method shall take place only upon prior notification to the competent authority of the Hong Kong Special Administrative Region.

III. With reference to Article 25

1. The competent authority of the applicant Party shall provide, in particular, the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

(a) the identity of the person under examination or investigation;

(b) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;

(c) the tax purpose for which the information is sought;

(d) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;

(e) to the extent known, the name and address of any person believed to be in possession of the requested information;

(f) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

2. It is understood that the exchange of information provided in Article 25 does not include measures which constitute "fishing expeditions".

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

4. It is understood that the information received by a Contracting Party may not be disclosed to a third jurisdiction.

IV. With reference to the Agreement

1. It is understood that nothing in the 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. Interpretation of the Agreement

It is understood that provisions of the Agreement which are drafted according to the corresponding provisions of the OECD Model Tax Convention or United

Nations Model Double Taxation Convention ("UN Model Tax Convention") shall generally be expected to have the same meaning as expressed in the OECD or UN Commentary thereon. The understanding in the preceding sentence will not apply with respect to the following:

(a) any reservations or observations to the OECD or UN Model Tax Convention or its Commentaries by either Contracting Party;

(b) any contrary interpretations in this Protocol;

(c) any contrary interpretation agreed to by the competent authorities after the entry into force of the Agreement.

The OECD or UN Commentary - as it may be revised from time to time - constitutes a means of interpretation in the sense of the Vienna Convention on the Law of Treaties 1969.

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

DONE in duplicate at Hongkong, this 25th day of May, 2010, in the English language.

| For the Government of the Republic of Austria: | For the Government of the Hong Kong Special Administrative Region of the People's Republic of China: |
| --- | --- |
| Andreas Schieder | K.C. Chan |