

LEGISLATIVE COUNCIL BRIEF

Inland Revenue Ordinance
(Chapter 112)

INLAND REVENUE (DOUBLE TAXATION RELIEF WITH RESPECT TO TAXES ON INCOME AND PREVENTION OF TAX EVASION AND AVOIDANCE) (REPUBLIC OF MAURITIUS) ORDER

INTRODUCTION

At the meeting of the Executive Council on 25 April 2023, the Council ADVISED and the Chief Executive ORDERED that the Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Republic of Mauritius) Order (“Mauritius Order”), at **Annex A**, should be made under section 49(1A) of the Inland Revenue Ordinance (Cap. 112) (“IRO”).

A

2. The Mauritius Order implements the Comprehensive Avoidance of Double Taxation Agreement (“CDTA”) and the Protocol thereto signed with Mauritius in November 2022 (hereinafter referred to as “Mauritius CDTA”).

JUSTIFICATIONS

Benefits of CDTAs in General

3. Double taxation refers to the imposition of comparable taxes by more than one tax jurisdiction in respect of the same source of income. The international community generally recognises that double taxation hinders the exchange of goods and services as well as movements of capital, technology and human resources, and undermines the development of economic relations between economies. As a business facilitation initiative, it is our policy to enter into CDTAs with our trading and investment partners so as to minimise double taxation.

4. Hong Kong adopts the territorial source principle of taxation whereby generally only income sourced from Hong Kong is subject to tax¹. However, double taxation may still occur where a jurisdiction outside Hong Kong taxes its residents' income derived from Hong Kong. CDTAs will enhance the certainty in respect of allocation of taxing rights and elimination of double taxation. Although many jurisdictions provide their residents with unilateral tax relief for the Hong Kong tax paid on income derived from Hong Kong, the tax relief available under CDTAs may exceed the level provided unilaterally by the jurisdictions concerned.

Benefits of the Mauritius CDTA

5. The Mauritius CDTA sets out the allocation of taxing rights between Hong Kong and Mauritius and the relief on the tax rates on different types of income. It will help investors better assess their potential tax liabilities from cross-border economic activities, foster economic and trade links, and provide incentives for enterprises of Mauritius to conduct business or invest in Hong Kong, and vice versa.

6. In the absence of the Mauritius CDTA, profits of Hong Kong companies conducting business through a permanent establishment in Mauritius may be taxed in both Hong Kong and Mauritius if the income is Hong Kong-sourced.

7. Under the Mauritius CDTA, any Mauritius tax paid, whether directly or by deduction, in respect of income derived by Hong Kong residents from sources in Mauritius will be allowed as a credit against the Hong Kong tax payable in respect of the same income, subject to the provisions of our tax laws.

8. Income derived by a Hong Kong resident from employment exercised in Mauritius which is not paid by (or on behalf of) an employer resident in Mauritius, and is not borne by a permanent establishment which the employer has in Mauritius, will be exempt from tax in Mauritius if the resident's aggregate stay in Mauritius in any relevant 12-month period does not exceed 183 days.

9. Profits from the operation of ships in international traffic earned

¹ Under the new foreign-sourced income exemption regime put in place since 1 January 2023, certain specified foreign-sourced passive income received in Hong Kong by multinational enterprise ("MNE") entities will continue to be exempt from tax unless the MNE entities concerned have no substantial economic presence in Hong Kong or fail to meet certain exemption conditions.

by enterprises of Hong Kong arising from Mauritius², which are currently subject to tax in Mauritius, will no longer be taxed in Mauritius under the Mauritius CDTA.

10. At present, Mauritius does not impose withholding tax on dividends. If, however, Mauritius imposes withholding tax on dividends in future, withholding tax rate capped at 0% would be applicable provided that the beneficial owner of the dividends is a company which holds directly at least 10% of the capital of the dividend-paying company throughout a 365-day period. The withholding tax rate on dividends received by most of the Hong Kong residents from Mauritius in all other cases would be capped at 5%³. The withholding tax rate applicable to interest and royalties received by most of the Hong Kong residents from Mauritius is capped at 5% under the Mauritius CDTA⁴, which is lower than the current general applicable rate of 15% in Mauritius

Exchange of Information (“EoI”)

11. Every CDTA entered into by Hong Kong contains an EoI Article to facilitate exchange of tax information for meeting the requirements of the Organisation for Economic Co-operation and Development. In order to protect taxpayers’ privacy and confidentiality of any information exchanged, the Government will continue to adopt highly prudent safeguard measures in our CDTAs.

12. Under the Mauritius CDTA, the following safeguards would be adopted –

- (a) the information sought should be foreseeably relevant, i.e. there will be no fishing expeditions;

² As for operation of aircraft in international traffic, Hong Kong has already been given the exclusive right to tax profits arising from Mauritius from such activities earned by enterprises of Hong Kong under the air services agreement between Hong Kong and Mauritius currently in force (Specification of Arrangements (Government of the Republic of Mauritius Concerning Air Services) (Double Taxation) Order (Cap. 112W) refers). Such profits are currently not taxable in Mauritius.

³ Withholding tax on dividends will be exempt if the dividends are paid to the Hong Kong Special Administrative Region (“HKSAR”) Government, the Hong Kong Monetary Authority, the Exchange Fund or any entity wholly or mainly owned by the HKSAR Government and mutually agreed between the competent authorities of Hong Kong and Mauritius.

⁴ Withholding tax on interest will be exempt if the interest is paid to the HKSAR Government, the Hong Kong Monetary Authority, the Exchange Fund or any entity wholly or mainly owned by the HKSAR Government and mutually agreed between the competent authorities of Hong Kong and Mauritius.

- (b) information received by the tax authorities concerned should be treated as confidential;
- (c) information will only be disclosed 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 relevant taxes;
- (d) information requested should not be disclosed to a third jurisdiction; and
- (e) there is no obligation to supply information under certain circumstances, for example, where the supply of information would disclose any trade, business, industrial, commercial or professional secret or trade process (including such information covered by legal professional privilege).

13. The scope of tax types for the purpose of EoI is confined to the taxes covered by the Mauritius CDTA.

Legal Basis

14. Under section 49(1A) of the IRO, if the Chief Executive in Council (“CE-in-C”), by order, declares that arrangements specified in the order have been made with the government of any territory outside Hong Kong, and that it is expedient that those arrangements should have effect, those arrangements shall have effect. Under section 49(1B) of the IRO, only arrangements made for the purposes of affording relief from double taxation; exchanging information in relation to any tax imposed by the laws of Hong Kong or any territory concerned; and/or implementing an initiative of international tax co-operation may be specified in an order under section 49(1A) of the IRO. To bring the Mauritius CDTA into effect, the CE-in-C has to declare by order that the arrangements with Mauritius on double taxation relief and exchange of information have been made.

OTHER OPTIONS

15. An order made in respect of the Mauritius CDTA by the CE-in-C under section 49(1A) of the IRO is the only way to give effect to the Mauritius CDTA. There is no other option.

THE ORDER

16. **Section 3** of the Mauritius Order declares that the arrangements in the Mauritius CDTA have been made and that it is expedient that those arrangements should have effect. The Mauritius CDTA was done in the English language. Its text is set out in the English text of the Schedule to the Mauritius Order, whereas a Chinese translation is set out in the Chinese text of the Schedule.

LEGISLATIVE TIMETABLE

17. The legislative timetable is as follows –

Publication in the Gazette	28 April 2023
Tabling at Legislative Council	3 May 2023
Commencement of the order	23 June 2023

IMPLICATIONS OF THE PROPOSAL

18. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal will not affect the binding effect of the existing provisions of the IRO and its subsidiary legislation. It has no environmental, gender or productivity implications, and no sustainability implications other than those set out in the economic implications paragraph in **Annex B**. The financial, economic, civil service and family implications of the proposal are also set out in **Annex B**.

B

PUBLIC CONSULTATION

19. The business and professional sectors have all along supported our policy to conclude more CDTAs with the trading and investment partners of Hong Kong.

PUBLICITY

20. We issued a press release on the signing of the Mauritius CDTA

on 7 November 2022. A spokesperson will be available to answer media and public enquiries.

BACKGROUND

21. As at 14 March 2023, we have signed CDTAs with 46 jurisdictions, including Mauritius. A list of Hong Kong's CDTA partners is at **Annex C**. A summary of the main provisions of the Mauritius CDTA is at **Annex D**.

22. We will continue to expand our CDTA network and seek to conclude CDTAs with the economies participating in the Belt and Road Initiative and emerging markets such as the Association of Southeast Asian Nations, the Middle East, Central Asia and Africa in particular.

ENQUIRIES

23. In case of enquiries about this Brief, please contact Mr Stephen Lo, Principal Assistant Secretary for Financial Services and the Treasury (Treasury), at 2810 2317.

Financial Services and the Treasury Bureau
26 April 2023

Inland Revenue (Double Taxation Relief with respect to Taxes on Income and Prevention of Tax Evasion and Avoidance) (Republic of Mauritius) Order

(Made by the Chief Executive in Council under section 49(1A) of the Inland Revenue Ordinance (Cap. 112))

1. Commencement

This Order comes into operation on 23 June 2023.

2. Interpretation

In this Order—

Agreement (《協定》) means 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 Mauritius for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance, done in duplicate at Port Louis on 14 September 2022 and at Hong Kong on 7 November 2022 in the English language;

Protocol (《議定書》) means the protocol to the Agreement, done in duplicate at Port Louis on 14 September 2022 and at Hong Kong on 7 November 2022 in the English language.

3. Declaration under section 49(1A)

(1) For the purposes of section 49(1A) of the Ordinance, it is declared—

(a) that the arrangements in the Agreement and the Protocol have been made; and

(b) that it is expedient that those arrangements should have effect.

(2) The English text of the Agreement is reproduced in the English text of Part 1 of the Schedule. A Chinese translation of the Agreement is set out in the Chinese text of that Part.

(3) The English text of the Protocol is reproduced in the English text of Part 2 of the Schedule. A Chinese translation of the Protocol is set out in the Chinese text of that Part.

Schedule

[s. 3]

Part 1

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 Mauritius for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance

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

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

Intending to conclude an Agreement for the elimination of double taxation with respect to taxes on income 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:

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 its local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are:
 - (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 Mauritius, the income tax.
4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes, as well as any other taxes falling within paragraphs 1 and 2 which a Contracting Party may impose in future.
5. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their taxation laws.
6. The existing taxes, together with the taxes imposed after the signature of the Agreement, are hereinafter referred to as “Hong Kong Special Administrative Region tax” or “Mauritius tax”, as the context requires.

Article 3

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
- (a) the term “Hong Kong Special Administrative Region” means any place where the tax laws of the Hong Kong Special Administrative Region of the People’s Republic of China apply;
- (b) the term “Mauritius” means the Republic of Mauritius and includes:

- (i) all the territories and islands which, in accordance with the laws of Mauritius, constitute the State of Mauritius;
- (ii) the territorial sea of Mauritius; and
- (iii) any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius, as an area, including the Continental Shelf, within which the rights of Mauritius with respect to the sea, the sea-bed and sub-soil and their natural resources may be exercised;
- (c) the term “business” includes the performance of professional services and of other activities of an independent character;
- (d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) the term “competent authority” means:
- (i) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorised representative; and
- (ii) in the case of Mauritius, the Director General of the Mauritius Revenue Authority or his authorised representative;
- (f) the terms “a Contracting Party” and “the other Contracting Party” mean the Hong Kong Special Administrative Region or Mauritius, as the context requires;

- (g) the term “enterprise” applies to the carrying on of any business;
 - (h) the terms “enterprise of a Contracting Party” and “enterprise of the other Contracting Party” mean respectively an enterprise carried on by a resident of a Contracting Party and an enterprise carried on by a resident of the other Contracting Party;
 - (i) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting Party, except when the ship or aircraft is operated solely between places in the other Contracting Party;
 - (j) the term “national”, in relation to Mauritius, means:
 - (i) any individual having the citizenship of Mauritius; and
 - (ii) any legal person, partnership (société) or association deriving its status as such from the laws in force in Mauritius;
 - (k) the term “person” includes an individual, a company, a trust, a partnership and any other body of persons; and
 - (l) the term “tax” means Hong Kong Special Administrative Region tax or Mauritius tax, as the context requires.
2. As regards the application of the Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of

that Party prevailing over a meaning given to the term under other laws of that Party.

Article 4

Resident

1. For the purposes of this Agreement, the term “resident of a Contracting Party” means:
- (a) in the case of the Hong Kong Special Administrative Region,
 - (i) any individual who ordinarily resides in the Hong Kong Special Administrative Region;
 - (ii) any individual who stays in the Hong Kong Special Administrative Region for more than 180 days during a year of assessment or for more than 300 days in two consecutive years of assessment one of which is the relevant year of assessment;
 - (iii) a company incorporated in the Hong Kong Special Administrative Region or, if incorporated outside the Hong Kong Special Administrative Region, being 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 Mauritius, any person who, under the laws of Mauritius, 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 Mauritius in respect only of income from sources in Mauritius;
 - (c) in the case of either Contracting Party, the Government and any local authority 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 Mauritius);

- (d) if he has the right of abode in the Hong Kong Special Administrative Region and is also a national of Mauritius, or if he does not have the right of abode in the Hong Kong Special Administrative Region nor is he a national of Mauritius, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting Parties, then it shall be deemed to be a resident only of the Party in which its place of effective management is situated.

Article 5

Permanent Establishment

1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term “permanent establishment” includes especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;

- (f) a warehouse, in relation to a person providing storage facilities for others; and
 - (g) a mine, an oil or gas well, a quarry or any other place of exploration or 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, in a Contracting Party by an enterprise of the other Contracting Party directly or through employees or other personnel engaged by that enterprise for such purpose, but only if such activities continue (for the same or a connected project) within the first-mentioned Party for a period or periods aggregating more than 183 days in 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 or display 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 or display;
 - (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 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 Party in respect of any activities which that person undertakes for the enterprise, if such a person:
- (a) has, and habitually exercises, in the first-mentioned 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 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; or
 - (b) has no such authority, but habitually maintains in the first-mentioned Party a stock of goods or merchandise from which

he regularly delivers goods or merchandise on behalf of the enterprise.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting Party merely because it carries on business in that Party through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
7. The fact that a company which is a resident of a Contracting Party controls or is controlled by a company which is a resident of the other Contracting Party, or which carries on business in that other Party (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income from Immovable Property

1. Income derived by a resident of a Contracting Party from immovable property (including income from agriculture or forestry) situated in the other Contracting Party may be taxed in that other Party.
2. The term “immovable property” shall have the meaning which it has under the law of the Contracting Party in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, quarries, sources

and other natural resources. Ships and aircraft shall not be regarded as immovable property.

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

Article 7

Business Profits

1. The profits of an enterprise of a Contracting Party shall be taxable only in that Party unless the enterprise carries on business in the other Contracting Party through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Party but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting Party carries on business in the other Contracting Party through a permanent establishment situated therein, there shall in each Contracting Party be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the

purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Party in which the permanent establishment is situated or elsewhere.

4. In so far 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 Party from determining the profits to be taxed by such apportionment or other method; the method adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and Air Transport

1. Profits 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 or 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 for this

purpose the competent authorities of the Contracting Parties shall if necessary consult each other.

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting Party to a resident of the other Contracting Party may be taxed in that other Party.
2. However, dividends paid by a company which is a resident of a Contracting Party may also be taxed in that Party according to the laws of that Party, but if the beneficial owner of the dividends is a resident of the other Contracting Party, the tax so charged shall not exceed:
 - (a) 0 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividends (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividends);
 - (b) 5 per cent of the gross amount of the dividends in all other cases.

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

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

3. Notwithstanding the provisions of paragraph 2, dividends arising in a Contracting Party are exempt from tax in that Party, if they are paid to:
- (a) in the case of the Hong Kong Special Administrative Region:
 - (i) the Government of the Hong Kong Special Administrative Region;
 - (ii) the Hong Kong Monetary Authority;
 - (iii) the Exchange Fund;
 - (iv) any entity wholly or mainly owned by the Government of the Hong Kong Special Administrative Region as may be agreed from time to time between the competent authorities of the Contracting Parties;
 - (b) in the case of Mauritius:
 - (i) the Government of the Republic of Mauritius or a local authority thereof;
 - (ii) the Bank of Mauritius;
 - (iii) any entity wholly or mainly owned by the Government of the Republic of Mauritius as may be agreed from time to

time between the competent authorities of the Contracting Parties.

4. The term “dividends” as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as 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.
5. The provisions of paragraphs 1, 2 and 3 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 a case, the provisions of Article 7 shall apply.
6. Where a company which is a resident of a Contracting Party derives profits or income from the other Contracting Party, that other Party may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other Party or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other Party, nor subject the company’s undistributed profits to a tax on the company’s undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Party.

Article 11

Interest

1. Interest arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Party.
2. However, interest arising in a Contracting Party may also be taxed in that Party according to the laws of that Party, but if the beneficial owner of the interest is a resident of the other Contracting Party, the tax so charged shall not exceed 5 per cent of the gross amount of the interest. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this limitation.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting Party is exempt from tax in that Party, if it is paid to:
 - (a) in the case of the Hong Kong Special Administrative Region:
 - (i) the Government of the Hong Kong Special Administrative Region;
 - (ii) the Hong Kong Monetary Authority;
 - (iii) the Exchange Fund;
 - (iv) any entity wholly or mainly owned by the Government of the Hong Kong Special Administrative Region as may be agreed from time to time between the competent authorities of the Contracting Parties;
 - (b) in the case of Mauritius:
 - (i) the Government of the Republic of Mauritius or a local authority thereof;

- (ii) the Bank of Mauritius;
 - (iii) any entity wholly or mainly owned by the Government of the Republic of Mauritius as may be agreed from time to time between the competent authorities of the Contracting Parties.
4. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. The term “interest” shall not include any item of income which is treated as a dividend under the provisions of Article 10 of this Agreement.
5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.
6. Interest shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the interest, whether 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.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a 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 the 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, royalties arising in a Contracting Party may also be taxed in that Party 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 5 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, tapes or discs 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 a 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, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a 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 competent authorities of 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, 18 and 19, 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 fiscal year concerned; and
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Party; and
 - (c) the remuneration is not borne by a permanent establishment which the employer has in the other Party.

3. Notwithstanding the preceding provisions 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

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 that resident's 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 sportsperson acting as such accrues not to the entertainer or sportsperson 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. Income derived by a resident of a Contracting Party from activities exercised in the other Contracting Party as provided for in paragraphs 1 and 2 shall be exempt from tax in that other Party if the visit to that other Party is supported wholly or substantially by funds of either Contracting Party or a local authority thereof, or takes place under a cultural agreement or arrangement between the Governments of the Contracting Parties.

Article 17

Pensions

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration (including a lump sum) 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) paid 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 a local authority thereof; 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 Party.

Article 18

Government Service

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by the Government or a local authority of a Contracting Party to an individual in respect of services rendered to that Government 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 Mauritius, is a national thereof; or
 - (ii) did not become a resident of that Party solely for the purpose of rendering the services.
2. (a) Any pension (including a lump sum) paid by, or paid out of funds created or contributed by, the Government or a local authority of a Contracting Party to an individual in respect of services rendered to that Government or authority shall be taxable only in that Party.
- (b) However, such pension (including a lump sum) shall be taxable only in the other Contracting Party if the individual is a resident of that Party and:
 - (i) in the case of the Hong Kong Special Administrative Region, has the right of abode therein; and

- (ii) in the case of Mauritius, is a national thereof.

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

Article 19

Teachers and Researchers

1. Where an individual is employed by a university, college or school in a Contracting Party or by an educational institution or scientific research institution recognised by the Government of that Contracting Party and is, or was immediately before visiting the other Contracting Party, a resident of that Contracting Party and is present in that other Contracting Party for the primary purpose of teaching or research at a university, college or school in that other Contracting Party or at an educational institution or scientific research institution recognised by the Government of that other Contracting Party, the remuneration derived by the individual in respect of such teaching or research, to the extent it is paid by, or on behalf of, the employer of that Contracting Party, shall not be taxed in that other Contracting Party for a period of two years, provided that such remuneration is subject to tax in that Contracting Party.
2. The period of “two years” provided in paragraph 1 shall begin on the date of the individual’s first arrival in the other Contracting Party for the above purpose or the date on which the provisions become effective in accordance with paragraph 2 of Article 28 of this Agreement, whichever is the later.

3. Paragraph 1 shall not apply to income derived from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

Article 20

Students

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

Article 21

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 a case, the provisions of Article 7 shall apply.

Article 22

Methods for Elimination of Double Taxation

1. Double taxation shall be eliminated in accordance with the following paragraphs of this Article.
2. 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), Mauritius tax paid under the laws of Mauritius 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 Mauritius, 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.

3. In the case of Mauritius:
 - (a) where a resident of Mauritius derives income from the Hong Kong Special Administrative Region the amount of tax on that income payable in the Hong Kong Special Administrative Region in accordance with the provisions of the Agreement may be credited against the Mauritius tax imposed on that resident,

- (b) where a company which is a resident of the Hong Kong Special Administrative Region pays a dividend to a resident of Mauritius who controls, directly or indirectly, at least 5% of the capital of the company paying the dividend, the credit shall take into account (in addition to any Hong Kong Special Administrative Region tax for which credit may be allowed under the provisions of subparagraph (a)) the Hong Kong Special Administrative Region tax payable by the first-mentioned company in respect of the profits out of which such dividend is paid,

provided that any credit allowed under this paragraph shall not exceed the Mauritius tax (as computed before allowing any such credit), which is appropriate to the profits or income derived from sources within the Hong Kong Special Administrative Region.

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 Mauritius, are nationals of Mauritius, 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 Mauritius) 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 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 Mauritius), as the case may be, 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 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, 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.

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. In this Article, the term “taxation” means taxes covered by this Agreement.

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 law of those Parties, present his case to the competent authority of either Contracting Party. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the law of the Contracting Parties.

3. The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting Parties may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 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 laws of the Contracting Parties concerning taxes covered by the Agreement, in so far 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 laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1. Such persons or authorities shall use the information only for such purposes. They may disclose the

information in public court proceedings or in judicial decisions. Information shall not be disclosed to any third jurisdiction for any purpose.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting Party the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party;
 - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).
4. If information is requested by a Contracting Party in accordance with this Article, the other Contracting Party shall use its information gathering measures to obtain the requested information, even though that other Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting Party to decline to supply information solely because there is no tax interest in such information to that Party.
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 those of members of consular posts, under the general rules of international law or under the provisions of special agreements.

Article 27

Entitlement to Benefits

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

Article 28

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. The Agreement shall enter into force on the date of the later of these notifications.
2. The provisions of the 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 the first day of April next following the date upon which the Agreement enters into force; and
 - (b) in Mauritius:
 - (i) in respect of taxes withheld at source, on amounts paid or credited on or after the first day of July next following the date upon which the Agreement enters into force; and
 - (ii) in respect of other taxes, for any taxable year beginning on or after the first day of July next following the date upon which the Agreement enters into force.
3. Until such time as the provisions of the Agreement become effective in accordance with paragraph 2, Article 9 of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Mauritius concerning Air Services signed in Hong Kong on 3 July 1998 shall, notwithstanding paragraph 5 of that Article, continue to have effect.

Article 29

Termination

1. This Agreement shall remain in force indefinitely.
2. However, either Contracting Party may terminate the Agreement through appropriate channels by giving to the other Contracting Party written notice of termination on or before the thirtieth day of June of any calendar year beginning after the expiration of a period of five years from the date of entry into force of the Agreement.
3. In such event, the Agreement shall cease to have effect:
 - (a) in the Hong Kong Special Administrative Region:

in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after the first day of April next following the date upon which such notice is given; and
 - (b) in Mauritius:
 - (i) in respect of taxes withheld at source, on amounts paid or credited on or after the first day of July next following the date upon which such notice is given; and
 - (ii) in respect of other taxes, for any taxable year beginning on or after the first day of July next following the date upon which such notice is given.

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

DONE at Port Louis this 14 day of September of the year two thousand and twenty two and at Hong Kong this 7th day of November of the year two thousand and twenty two in two originals, in the English language.

[SIGNED]

Part 2

Protocol to 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 Mauritius for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance

At the time of the signing of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of Mauritius for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance (the "Agreement"), the Governments of the Contracting Parties have agreed upon the following provisions which shall form an integral part of the Agreement.

1. It is understood that the Hong Kong Special Administrative Region is not obliged to regard as tax, for the purposes of the Agreement, any penalty or interest imposed under the laws of either Contracting Party relating to the taxes covered by the Agreement. It is further

understood that in relation to elimination of double taxation, the Hong Kong Special Administrative Region is not obliged to allow any credit with respect to any penalty or interest imposed under the laws of Mauritius.

2. With respect to Article 25 (Exchange of Information), it is understood that this article obliges the Contracting Parties to exchange information only in respect of taxable periods for which the provisions of the Agreement have effect.

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

DONE at Port Louis this 14 day of September of the year two thousand and twenty two and at Hong Kong this 7th day of November of the year two thousand and twenty two in two originals, in the English language.

[SIGNED]

Clerk to the Executive Council

COUNCIL CHAMBER

2023

Explanatory Note

The Hong Kong Special Administrative Region Government and the Government of the Republic of Mauritius signed an agreement for the elimination of double taxation with respect to taxes on income and the prevention of tax evasion and avoidance (*Agreement*) together with a protocol to the Agreement (*Protocol*) on 7 November 2022 and 14 September 2022 respectively.

2. This Order specifies the arrangements in the Agreement and the Protocol (*arrangements*) as arrangements under section 49(1A) of the Inland Revenue Ordinance (Cap. 112), and declares that it is expedient that those arrangements should have effect. The Agreement and the Protocol were done in the English language and are reproduced in the English text of the Schedule to this Order. Chinese translations of the Agreement and the Protocol are set out in the Chinese text of the Schedule to this Order.
3. The effects of the declaration are—
 - (a) that the arrangements have effect in relation to tax under the Inland Revenue Ordinance (Cap. 112) despite anything in any enactment; and
 - (b) that the arrangements, for the purposes of any provision of the arrangements that requires disclosure of information concerning tax of Mauritius, have effect in relation to any tax of Mauritius that is the subject of that provision.

Financial, Economic, Civil Service and Family Implications of the Proposal

Financial Implications

The Government would forgo a very small sum of revenue which is currently being collected in respect of profits of Mauritius resident companies not attributable to a permanent establishment in Hong Kong, as well as profits of Mauritius operators from shipping services.

Economic Implications

2. The Mauritius CDTA will facilitate business activities between Hong Kong and Mauritius, and contribute to the economic development of Hong Kong. It will enhance the economic interaction between Hong Kong and Mauritius by providing enhanced certainty to the tax liabilities of businessmen and investors.

Civil Service Implications

3. The closer economic relations between Hong Kong and Mauritius may lead to additional requests for exchange of tax information from Mauritius. This will entail additional work for the Inland Revenue Department, which will be absorbed from within existing resources as far as possible. Where necessary, additional manpower resources will be sought with justifications in accordance with the established mechanism.

Family Implications

4. Given that the tax burden of some individuals may be relieved under the Mauritius CDTA, the proposal may have positive implications for the financial situation of their families.

Annex C

List of jurisdictions with which Hong Kong has entered into Comprehensive Avoidance of Double Taxation Agreements/Arrangements (as at 14 March 2023)

	Jurisdictions	Month of Signing
1	Belgium	December 2003
2	Thailand	September 2005
3	Mainland of China	August 2006
4	Luxembourg	November 2007
5	Vietnam	December 2008
6	Brunei	March 2010
7	The Netherlands	March 2010
8	Indonesia	March 2010
9	Hungary	May 2010
10	Kuwait	May 2010
11	Austria	May 2010
12	The United Kingdom	June 2010
13	Ireland	June 2010
14	Liechtenstein	August 2010
15	France	October 2010
16	Japan	November 2010
17	New Zealand	December 2010
18	Portugal	March 2011
19	Spain	April 2011
20	The Czech Republic	June 2011
21	Switzerland	October 2011
22	Malta	November 2011
23	Jersey	February 2012
24	Malaysia	April 2012
25	Mexico	June 2012
26	Canada	November 2012
27	Italy	January 2013
28	Guernsey	April 2013
29	Qatar	May 2013
30	Korea	July 2014

No.	Jurisdictions	Month of Signing
31	South Africa	October 2014
32	United Arab Emirates	December 2014
33	Romania	November 2015
34	Russia	January 2016
35	Latvia	April 2016
36	Belarus	January 2017
37	Pakistan	February 2017
38	Saudi Arabia	August 2017
39	India	March 2018
40	Finland	May 2018
41	Cambodia	June 2019
42	Estonia	September 2019
43	Macao Special Administrative Region	November 2019
44	Serbia	August 2020
45	Georgia	October 2020
46	Mauritius [#]	November 2022

[#] The Mauritius CDTA has not yet entered into force pending completion of the ratification procedures.

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 Mauritius for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance ("Mauritius CDTA")

Summary of Main Provisions

The Mauritius CDTA covers the following types of taxes:

- (a) in respect of Hong Kong –
 - (i) profits tax;
 - (ii) salaries tax; and
 - (iii) property tax;
- (b) in respect of Mauritius – the income tax.

2. The Mauritius CDTA deals with the taxing of income of the resident of one Contracting Party ("resident jurisdiction") derived from another Contracting Party ("source jurisdiction").

Exclusive Taxing Rights

3. Where the right to tax income is allocated exclusively to one Contracting Party under the Mauritius CDTA (the resident jurisdiction or the source jurisdiction), there is no double taxation. It is provided in the Mauritius CDTA that the following types of income shall only be taxed in the resident jurisdiction:

- (a) profits of an enterprise, unless the enterprise carries on business in the source jurisdiction through a permanent establishment situated therein (generally a fixed place of business through which the business of an enterprise is wholly or partly carried on);
- (b) profits of an enterprise from the operation of ships or aircraft in international traffic, and gains derived by an enterprise from the alienation of such ships or aircraft or movable property pertaining to the operation of such ships or aircraft;

- (c) remuneration from non-government employment, including employment exercised in the source jurisdiction, provided that, amongst others, the employee is present in the source jurisdiction for a period or periods not exceeding in the aggregate 183 days in any relevant 12-month period;
- (d) remuneration from non-government employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of the resident jurisdiction;
- (e) income of entertainers and sportspersons from their personal activities as such exercised in the source jurisdiction if the visit to that jurisdiction is supported wholly or substantially by funds of either Contracting Party or a local authority thereof or takes place under a cultural agreement or arrangement between the Governments of the Contracting Parties;
- (f) pensions and other similar remuneration (including a lump sum) from non-government employment or self-employment, except those paid under a pension or retirement scheme which is a public scheme being a part of the social security system of the source jurisdiction or a local authority thereof, or under a pension or retirement scheme in which individuals may participate to secure retirement benefits and which is recognised for tax purposes in the source jurisdiction;
- (g) gains from the alienation of any property not expressly dealt with in the Mauritius CDTA; and
- (h) other income not expressly dealt with in the Mauritius CDTA.

4. Pensions and other similar remuneration (including a lump sum) from non-government employment or self-employment paid under a pension or retirement scheme which is a public scheme being a part of the social security system of the source jurisdiction or a local authority thereof, or under a pension or retirement scheme in which individuals may participate to secure retirement benefits and which is recognised for tax purposes in the source jurisdiction, are taxable only in the source jurisdiction. Salaries, wages and other similar remuneration and any pensions (including a lump sum) paid by the Government or a local authority of a Contracting Party in respect of services rendered to that Government or authority are, in general, taxable only in that Party (source jurisdiction).

Shared Taxing Rights

5. Where both Contracting Parties are given the right to tax the same item of income, the resident jurisdiction is required under the Mauritius CDTA to give double taxation relief to its resident for any income doubly assessed (i.e. the source jurisdiction has the primary right to tax and the resident jurisdiction is left with a secondary right). It is provided in the Mauritius CDTA that the following types of income may be taxed in both jurisdictions:

- (a) income from immovable property situated in the source jurisdiction, and gains from the alienation of such property;
- (b) profits of an enterprise which carries on business in the source jurisdiction through a permanent establishment situated therein (to the extent that such profits are attributable to the permanent establishment), and gains from the alienation of movable property forming part of the business property of such permanent establishment;
- (c) passive income of dividends, interest and royalties received from residents of the source jurisdiction. The source jurisdiction's right to tax is subject to specified caps on the withholding tax rates as follows:
 - for dividends, 0% if the beneficial owner of the dividends is a company which holds directly at least 10% of the capital of the dividend-paying company throughout a 365-day period, or if the dividends are paid to the Government of Hong Kong, the Hong Kong Monetary Authority or the Exchange Fund (in respect of Hong Kong), the Government of Mauritius or a local authority thereof, or the Bank of Mauritius (in respect of Mauritius), or any entity wholly or mainly owned by the Government of Hong Kong or Mauritius as may be agreed from time to time between the competent authorities of Hong Kong and Mauritius; and 5% in all other cases;
 - for interest, 0% if the interest is paid to the Government of Hong Kong, the Hong Kong Monetary Authority or the Exchange Fund (in respect of Hong Kong), the Government of Mauritius or a local authority thereof, or

the Bank of Mauritius (in respect of Mauritius), or any entity wholly or mainly owned by the Government of Hong Kong or Mauritius as may be agreed from time to time between the competent authorities of Hong Kong and Mauritius; and 5% in all other cases;

- for royalties, 5%;
- (d) gains from the alienation of shares of a company (except gains from quoted shares or gains arising from corporate reorganisation, merger or similar operation) deriving more than 50% of its asset value directly or indirectly from immovable property (other than one in which the company carries on its business) situated in the source jurisdiction;
- (e) remuneration from non-government employment exercised in the source jurisdiction where, amongst others, the employee is present in the source jurisdiction for a period or periods exceeding in the aggregate 183 days in any relevant 12-month period;
- (f) directors' fees from a company resident in the source jurisdiction; and
- (g) income of entertainers and sportspersons from their personal activities as such exercised in the source jurisdiction, except where the visit to that jurisdiction is supported wholly or substantially by funds of either Contracting Party or a local authority thereof, or takes place under a cultural agreement or arrangement between the Governments of the Contracting Parties.

6. In general, in case of shared taxing rights, double taxation relief may be given to a taxpayer either through the exemption method, where income taxable in the source jurisdiction is exempt from taxation in the resident jurisdiction; or through the credit method, where income taxable in the source jurisdiction is subject to tax in the resident jurisdiction but the tax levied in the source jurisdiction is credited against the tax levied in the resident jurisdiction on such income. Both Hong Kong and Mauritius will provide double taxation relief for their own residents by the credit method.